

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES of AMERICA,) COURT FILE
) NO. 17-CR-64 (DWF/KMM)
)
Plaintiff,)
)
vs.)
)
EDWARD S. ADAMS,) Courtroom 8 East
) Monday, January 8, 2018
) Minneapolis, Minnesota
Defendant.) 9:00 A.M.
)

PRETRIAL MOTIONS, EVIDENTIARY HEARING, ARRAIGNMENT

BEFORE THE HONORABLE KATHERINE M. MENENDEZ
UNITED STATES MAGISTRATE JUDGE

TIMOTHY J. WILLETTE, RDR, CRR, CRC
Official Court Reporter - United States District Court
1005 United States Courthouse
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Minneapolis, Minnesota 55415
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* * * *

1 (9:00 a.m.)

2 **P R O C E E D I N G S**

3 **I N O P E N C O U R T**

4 (Defendant present)

5 THE COURT: Thank you. Please be seated.

6 All right. Welcome, everybody. We are here for a
7 pretrial motion hearing in United States vs. Adams.

8 We are on the record and why don't we go ahead and
9 get notices of appearances for everyone, beginning with the
10 Government, please.

11 MR. MacLAUGHLIN: Your Honor, thank you.

12 So at counsel table with me is the actual
13 prosecution team in this case: Assistant U.S. Attorneys
14 David Maria and John Kokkinen.

15 For purposes of this hearing, because they've been
16 in trial and because of the subpoena issue, there are three
17 other lawyers here: myself, David MacLaughlin, Assistant
18 U.S. Attorney Tracy Perzel, and Assistant U.S. Attorney Tim
19 Rank.

20 THE COURT: Okay. And who's going to be helming
21 the boat, you?

22 MR. MacLAUGHLIN: I guess I'm helming the boat,
23 yeah.

24 THE COURT: Okay. Great. Welcome.

25 MR. MacLAUGHLIN: Thank you.

1 MR. WADE: Good morning, Your Honor. Lance Wade
2 from the Williams & Connolly law firm on behalf of Mr. Ed
3 Adams, who is present this morning. With me at counsel
4 table is my colleague Gloria Maier, my colleague Joseph
5 Petrosinelli, and Deborah Ellingboe of the Faegre law firm.

6 I will be taking the lead in the hearing this
7 morning, although Ms. Maier will also be taking some
8 witnesses.

9 THE COURT: Okay. Excellent. Thank you and
10 welcome, welcome to everybody.

11 How are you holding up, Mr. Adams?

12 THE DEFENDANT: I'm fine, thank you, Your Honor.

13 THE COURT: Good. Welcome.

14 THE DEFENDANT: Thank you.

15 THE COURT: Okay. So the way I plan to proceed is
16 to hear brief -- in light of the very substantial briefing
17 that I've received -- argument from both sets of counsel
18 related to the motion to quash and the motion to compel.

19 I'll then issue a brief ruling on those two
20 matters to be followed by a more fulsome order. But I'll be
21 issuing the ruling from the bench, just to let you know,
22 because it obviously has bearing on the next steps in the
23 hearing.

24 And then we'll move right into the hearing on the
25 motion to suppress. I am assuming that all of the

1 anticipated testimony today relates only to the motion to
2 suppress and not to the motion for bill of particulars, is
3 that correct?

4 MR. MacLAUGHLIN: That's correct, Your Honor.

5 THE COURT: Okay. And correct from your
6 perspective as well.

7 MR. WADE: That's correct, Your Honor. And in
8 fact, we've conferred with the Government about the motions
9 in light of the superseding indictment, and I'll remind the
10 Court that I think we have to deal with an arraignment this
11 morning --

12 THE COURT: Yes, sir.

13 MR. WADE: -- as well. I think as a technical
14 matter at least the bill of particulars is moot and --
15 because of the superseding indictment, and so it would be
16 our intention after consulting with the Government of not
17 proceeding with bill of particulars at this point, because
18 we think there will be additional motions against the
19 superseding indictment and that it makes sense to consider
20 the bill of particulars in connection with those motions.

21 THE COURT: Okay. Why?

22 MR. WADE: The bill of particulars -- first of
23 all, Your Honor, I anticipate that there will be new motions
24 against the indictment that will affect the indictment in
25 its entirety, so it's possible that the Court will never

1 even actually ever have to consider the bill of particulars
2 because it may choose to dismiss some or all counts of the
3 indictment.

4 THE COURT: So there will be a motion to dismiss
5 brought as to new counts in the indictment that also would
6 affect existing counts in the indictment?

7 MR. WADE: Yes, Your Honor. There will be a
8 motion that I believe will relate to all counts of the
9 indictment relating to the fact that the Government has
10 accessed privileged materials in this case and that those
11 privileged materials have tainted the indictment.

12 I think that they're also going to be -- we
13 anticipate -- of course, we just got the superseding
14 indictment a couple days before the holiday, but we
15 anticipate that there will also be motions that are targeted
16 specifically to the tax counts, a number of them, and we
17 anticipate that there will be a bill of particulars that are
18 specific to the tax counts and that it's intertwined with
19 the particulars on the other counts as well.

20 THE COURT: So you're withdrawing the bill of
21 particulars motion for now, but with the intention of
22 bringing it as to the entire new superseding indictment.

23 MR. WADE: Correct, and the particulars we'll seek
24 will relate to the tax counts, the new counts and the old
25 counts, and it will be intertwined, so we thought it made

1 sense to do that at one time.

2 I'll also note for the Court, I think as a
3 technical matter we're not withdrawing this motion. I think
4 as a technical matter this motion is moot as a result of the
5 superseding indictment because the indictment for which we
6 sought particulars no longer exists.

7 THE COURT: Well, I'm not sure if it's moot if you
8 think it suffers from the same infirmities that its
9 predecessor suffered from as to the counts that are not new.
10 I mean, it's not your position that the superseding
11 indictment has assuaged your concerns about particularity.

12 MR. WADE: Not at all, Your Honor. If anything --

13 THE COURT: So I'm not quite certain --

14 MR. WADE: -- it's heightened them.

15 THE COURT: -- why I wouldn't address the motion
16 as to the fraud counts, or as to the counts that exist, and
17 then you can seek a new motion for a bill of particulars as
18 to the new counts. The fraud counts have not changed in a
19 way that materially affects the bill of particulars argument
20 that you've already raised, correct?

21 MR. WADE: The new counts directly relate to the
22 old counts, and the conduct that is at issue in the new
23 counts and the particulars that are required are intertwined
24 with the particulars that are required for the old counts,
25 and I think that they inform the analysis as to what

1 particulars should be ordered as a whole. That's I believe
2 as a technical legal matter.

3 As a practical matter, Your Honor, given
4 everything that was on the docket with the Court and that
5 fact that we had so much to deal with today, we conferred
6 with the Government about what to do on this and we together
7 came forward and decided to recommend to the Court that we
8 table that and deal with it separately to be most efficient
9 so that we can deal with everything at one time.

10 In making these representations to the Court and
11 without putting the cart before the horse, I think also in
12 conferring with the Government, we're mindful of the fact
13 that for a variety of reasons in this case we think that a
14 new schedule is going to be required.

15 We have not had the opportunity because of
16 different counsel's vacation and being out of town to confer
17 about a new schedule, but I think all the parties agree that
18 as a practical matter in light of the significance of the
19 motion that's before the Court on the suppression issues and
20 other privilege motions and taint motions that are likely to
21 follow if the motion to suppress is not granted, that we all
22 need to be realistic about the time frame that we're
23 operating under here and are going to need to jointly
24 confer, try to come up with a new schedule and propose that
25 to the Court.

1 We do that with great hesitation, Your Honor.

2 It's -- the delays that have resulted in these proceedings
3 are through no fault of Mr. Adams. They are as a result of
4 delayed disclosures by the Government or litigation
5 schedule, frankly, trial schedules of other counsel in the
6 case and the need to delay briefing.

7 But just as an example, Your Honor, we were
8 supposed to have this motions hearing two months ago and
9 obviously we didn't have it then and a lot has ensued that
10 has fully occupied counsel in the meantime, none of which
11 relates to preparing for trial.

12 So I think we're in agreement with the Government
13 on the fact that a new schedule is likely needed both for
14 those reasons and in light of the superseding indictment,
15 which involves new charges that we have to deal with, new
16 motions, a new expert, at least one that we'll have to
17 identify and retain. And so our plan was to confer with the
18 Government after this hearing and then come up with a
19 proposed schedule to proffer to the Court.

20 THE COURT: Have you had any conversations with
21 Judge Frank's chambers about the necessity for a new
22 schedule?

23 MR. WADE: Again, we have not at this time, Your
24 Honor. It was our intention. It's my understanding
25 Mr. Maria was on vacation last week and he's been the lead

1 lawyer in the case.

2 THE COURT: Okay.

3 MR. WADE: Mr. Kokkinen and I conferred regarding
4 scheduling issues and we wanted to have the opportunity once
5 Mr. Maria was back in town to then get our heads together
6 and propose something, and I think our expectation would be
7 we would try to do that, you know, propose a schedule that
8 affects matters before Your Honor and matters before Judge
9 Frank at the same time.

10 MR. KOKKINEN: That's correct, Your Honor. We
11 spoke on Friday, I believe it was, and Mr. Wade brought up
12 the issue of wanting to work on coming up with an agreement
13 about a new trial date. I said that the Government was not
14 opposed to the idea of that given our agreement, I suppose,
15 that as a result of today's hearing there's likely going to
16 be post-hearing briefing, there's likely going to be appeals
17 to the District Court, there's likely going to be additional
18 motions by the defense with regard to the superseding
19 indictment.

20 And so I think we are in agreement that a new
21 trial date will need to be requested from Judge Frank.
22 Again, that conversation was just on Friday, so we haven't
23 reached out to Judge Frank yet to -- and we haven't had any
24 discussions about specific timing yet, so I don't know what
25 defense counsel has in mind. We're open to the idea of

1 moving things. It may just be a matter of how far out they
2 get moved that would be the issue that we'll have to
3 negotiate with defense counsel.

4 THE COURT: Okay. I'll leave it to you whether
5 you would like to withdraw the motion for a bill of
6 particulars to be refiled later or whether you would like me
7 to deny it as moot. One or the other has to happen. I
8 can't just have a motion languishing that makes the heads in
9 the Clerk's Office explode. So we have to choose one path
10 or the other. Either I have to address it by denying it or
11 you have to withdraw it.

12 MR. WADE: Understandably, Your Honor. I think in
13 light of that we would request that you deny it as moot
14 without prejudice to refile it against the superseding
15 indictment.

16 THE COURT: Okay. Let me also note that the
17 superseding indictment adds additional things, but doesn't
18 radically alter this landscape. And I think that there's
19 going to be some conservative appetite for adjusting the
20 schedule, and I would encourage that we don't design a
21 schedule that requires the full exploration of this round of
22 pretrial motions, including time for reports and
23 recommendation, objections to the District Court,
24 post-hearing briefing before it all gets started and then
25 commencing the next wave of pretrial motions.

1 There are additional counts in this case, but to
2 the extent that you have indictment -- indictment-wide
3 motions, it sounds like they build upon issues that are
4 already before the Court. And so just to signal to the
5 parties, we need to keep this case moving. It's already
6 been around for a long time. I understand it's a complex
7 and significant case with enormous stakes for Mr. Adams, but
8 I'm not looking to have full exploration of the first round
9 of motions followed by beginning a clock related to the
10 second.

11 MR. WADE: We understand, Your Honor, and we agree
12 and we'll be mindful of that in conferring with the
13 Government on the schedule.

14 THE COURT: Thank you.

15 MR. WADE: I will note that I believe that the
16 motions that will be brought before the Court with respect
17 to the superseding indictment are likely to actually be more
18 significant and complex than the motions that are already
19 before the Court. We want to be respectful of the Court and
20 the burdens that are imposed on the Court in dealing with a
21 series of complex motions and recognizing that there's
22 likely to be extensive briefing on these issues required,
23 but we will do our best to find a schedule that moves all of
24 this forward as expeditiously as possible. I assure you
25 that is Mr. Adams' desire and certainly in his interest to

1 do in this case.

2 THE COURT: Okay. Thank you.

3 Anything you want to add from the Government's
4 perspective with respect to any of that?

5 MR. MacLAUGHLIN: Not on any of that. Thank you,
6 Judge.

7 THE COURT: Okay. I'm going to order -- and I'll
8 just briefly mention in the written order -- denial without
9 prejudice as moot of the motion for bill of particulars. We
10 will explore that more fully if and when it comes before us
11 in response to the superseding indictment.

12 Let's proceed with argument with respect to both
13 the motion to compel and the motion to quash. And let me
14 just note that I've read everything everybody has filed and
15 I think we can keep this part of the conversation quite
16 brief.

17 With that invitation, Mr. MacLaughlin.

18 MR. MacLAUGHLIN: Thank you, Your Honor.

19 We did say a lot in our papers. Mr. Genrich did a
20 very thorough job of briefing this.

21 I would simply note on the motion to quash, Your
22 Honor, that it is really unusual for an Assistant U.S.
23 Attorney to receive a subpoena. I've been in the office 20
24 years. I've never heard of it happening in our office.

25 In this case there is sunshine all over the place.

1 We handed out our search terms, every search term that every
2 member of the prosecution team undertook in this database
3 called Relativity has been turned over. That is so far
4 above market that -- I mean, we have told them how we
5 executed this warrant. There are four or five declarations.
6 There are primary contemporaneous e-mail communications that
7 have been disclosed. As we repeatedly said in our papers,
8 the Court has everything it needs. The test in the case law
9 is whether Mr. Maria's testimony is needed and not satisfied
10 from other sources. I think neither one of those parts of
11 the conjunctive test are met, and so we stand by our motion
12 to quash.

13 THE COURT: Okay. Why don't you talk about the
14 motion to compel while you're here.

15 MR. MacLAUGHLIN: Yes, Your Honor.

16 As you know, we made an *ex parte* filing with the
17 Court some time ago in which we provided the Court with
18 essentially documents that reflect our compliance with the
19 United States Attorneys' Manual and our conversations with
20 the Criminal Division of the Department of Justice,
21 primarily in the form of what's called the PSEU, the Policy
22 and Statutory Enforcement Unit. The Court has those things.

23 I think the Court upon reviewing them was probably
24 struck by how "work product-y" and "internal memorandum-y"
25 they are. I'm sorry to the court reporter for saying these

1 things, but these are truly in the nature of internal
2 Government communications. I think there's plenty of
3 evidence the Court has that we in fact complied with the
4 requirement that we talk to our brethren in Washington, D.C.

5 It seems to me that what we lawyers said to each
6 other prior to getting this warrant is not relevant to the
7 overbreadth of the warrant, the alleged overbreadth of the
8 warrant, or how we executed it after we got done talking to
9 each other.

10 So for all of those reasons, as well as the ones
11 stated in our brief, Your Honor, we resist their motion to
12 compel what they call hearing documents.

13 THE COURT: Thank you.

14 All right. Mr. Wade.

15 MR. WADE: Very briefly, Your Honor.

16 I agree with Mr. MacLaughlin that seeking
17 testimony from an Assistant United States Attorney is
18 unusual. This is an unusual case. Mr. Maria was the most
19 active person in searching within the Yahoo e-mail. He
20 directed the search, he set out parameters for what could be
21 searched, and we should be entitled to gather the objective
22 evidence that relates to what he did.

23 THE COURT: How come the extensive database
24 documentation about the searches that were conducted aren't
25 adequate to that end?

1 MR. WADE: Because there's a lot of information
2 that Mr. Maria has not provided that is relevant to this
3 inquiry.

4 THE COURT: Do you have information about the
5 searches that were done?

6 MR. WADE: We have information about queries that
7 were run within the database.

8 THE COURT: And do you have information about the
9 documents that were in the database at the time that the
10 queries were run?

11 MR. WADE: We know which universe was in the body
12 that was being searched at the time the queries were run,
13 right?

14 MR. WADE: Constructively we do, Your Honor. I
15 would suggest that it would take tens of thousands of
16 dollars of forensic work to pull the documents that were
17 pulled out of the database on April 4th, 2017 based on the
18 search terms the Government executed back into the database
19 to identify what the universe of materials that the
20 Government was accessing.

21 But fundamentally, Your Honor, the question really
22 before the Court, I think, and why Mr. Maria's testimony is
23 most relevant -- I think it's relevant for a variety of
24 reasons that's set forth in our briefing, and I'm not going
25 to go through each and every tick and tie, in fact, that we

1 identified.

2 We didn't hold a lot back. We've obviously
3 developed some additional thinking and identified some
4 additional relevant facts as we prepared for the hearing,
5 but we were pretty robust, as the Court knows, in terms of
6 identifying the involvement of Mr. Maria, the extensive
7 involvement of him, and his conduct. What we don't know is
8 what he did in terms of directing the team on what they
9 could search, what --

10 THE COURT: But we know what they did search,
11 right? I mean, we know the searches that were done.
12 Regardless of whether those were done at Mr. Maria's
13 instruction or on the *sua sponte* instincts of an agent, we
14 know the searches that were done, right?

15 MR. WADE: We know the queries that were done and
16 we know that documents were viewed.

17 THE COURT: And we know which documents were
18 viewed.

19 MR. WADE: We do not, Your Honor.

20 THE COURT: We know which documents were available
21 for review?

22 MR. WADE: It is knowable what documents were
23 viewed. The Government provided voluminous spreadsheets
24 that will be before the Court later this morning and this
25 afternoon that show what searches were done, that show that

1 documents were viewed in response to searches. They have
2 the ability to identify specifically which documents were
3 viewed by number. We requested that and the Government
4 refused to provide that information, so we don't have that.
5 We don't know what was viewed.

6 But fundamentally, if you back up -- and I don't
7 want to segue into some quasi-argument on the motion --
8 there is, without Mr. Maria's declaration, which the
9 Government says that -- in a footnote to its reply that it
10 does not need to offer in this case. Without that there is
11 no evidence that a quote-unquote seizure took place in this
12 case. They are characterizing running of search terms --

13 THE COURT: What about the e-mails that talk about
14 the seizure? Why don't those establish that a seizure was
15 done.

16 MR. WADE: I'm not aware of which e-mails the
17 Court refers to that talk about a seizure. There are no
18 e-mails that I'm aware of prior to or around the time that
19 the seizure occurred that characterize that as a seizure.

20 THE COURT: Okay.

21 MR. WADE: The only characterization of that as a
22 seizure is Mr. Maria's declaration. It's the only evidence
23 that I'm aware of -- and there's a lot of evidence in this
24 case, Your Honor, so if I'm missing something, I'm happy to
25 have counsel for the Government identify it, but it's the

1 only evidence that I'm aware of that reflects that that was
2 a seizure. Everything else that happened in the database
3 was not done in pursuance -- in connection with the seizure.
4 There's no evidence that ties all --

5 THE COURT: What if you never called that a
6 seizure?

7 MR. WADE: I'm sorry?

8 THE COURT: What's the legal significance of the
9 declaration at the moment of the seizure? I mean, let's say
10 they never had that declaration of what is or isn't a
11 seizure but instead had proceeded as they did, sorting the
12 documents, removing -- you know, doing extensive searches
13 with respect to terms that might indicate privilege,
14 segregating those documents, not looking at those documents,
15 having the intention to call a team down the road if they
16 wanted to look in those documents, doing relevant searches
17 and relevant searches within the documents, but never had
18 this aha moment of declaring it a seizure? Would that
19 change the analysis?

20 MR. WADE: I think it would. I don't think the
21 analysis changes a lot with the characterization of it as a
22 seizure *post hoc*. I think the real evidence of the seizure
23 is that the seizure took place when they loaded the
24 documents into the database, removed the privileged terms in
25 an underinclusive way and then gave unfettered access to the

1 investigation team. The best evidence in this case of a
2 seizure occurring is that, which is exceptionally overbroad.
3 It was essentially a general warrant at that point.

4 THE COURT: So why is his declaration relevant
5 about the moment of what you describe as a pretextual
6 seizure?

7 MR. WADE: Well, to the extent that the Court
8 might consider that as a seizure, as the seizure, we're
9 entitled to explore the circumstances surrounding the
10 seizure.

11 THE COURT: But you know the circumstances
12 surrounding the seizure. You know when they claim it
13 occurred, right? I mean, it doesn't matter if he said that
14 in his affidavit or not. The Government has taken the
15 position that that constitutes the seizure. They could take
16 that position in a memorandum. That's their legal position,
17 right?

18 MR. WADE: If they're taking that position as a
19 matter of legal argument that that is when the seizure
20 occurred, I guess as a technical matter -- and we're not to
21 consider Mr. Maria's declaration, I guess certainly they can
22 make that legal argument in the same way we as lawyers can
23 make any legal argument. But they have actually -- to
24 support the reasonableness of the execution of the warrant,
25 they have taken the position as a factual matter in the

1 declaration that that is when the seizure occurred.

2 Mr. Maria is the only one based on the documents that are
3 before us that we're aware of that identified the search
4 terms.

5 THE COURT: But we know the search terms he
6 identified.

7 MR. WADE: But we don't know the process by which
8 he identified the search terms. We don't know whether --

9 THE COURT: I mean, I guess what I'm trying to get
10 at is, one thing that I learned to the detriment of my
11 clients for 20 years is that the subjective intention of
12 Government officers, whether they're U.S. Attorneys or
13 law-enforcement officers, is irrelevant, even when -- you
14 know, as a former public defender, you new darn well that
15 there was a certain motivation going on. That's irrelevant.
16 What's relevant is whether it complies with the expectations
17 of the law objectively, and here we have an absolute flood
18 of information about the searches that were done, the
19 methods that were used, the mechanisms that were in place.
20 Whether Mr. Maria's subjective belief about why he was using
21 those is available through other sources or not, it's not
22 relevant to my calculus.

23 MR. WADE: Respectfully, it is, Your Honor,
24 because there are additional objective facts that need to
25 be -- that we have the right, we believe, to explore in

1 connection with our motion to suppress.

2 THE COURT: Like what?

3 MR. WADE: All of the searches that you have just
4 identified in terms of everything that happened in advance
5 of April 4th, 2007 at this point, based on the record before
6 the Court, are in no way tied to the conduct of Mr. Maria in
7 developing search terms and identifying --

8 THE COURT: But why does how he got to the search
9 terms matter? I can look at the search terms, decide
10 whether they constitute a reasonable compliance with the
11 warrant, reasonable protection of privilege. Why does his
12 thinking in choosing term A, rejecting term B, matter to
13 that analysis? In the same way -- let me give you a
14 more --

15 MR. WADE: Sure.

16 THE COURT: -- you know, mundane 1980s analogy,
17 right?

18 We have a more traditional search of boxes in
19 somebody's office, and the -- they take the unusual step of
20 somehow recording everything that they looked at, but why
21 they chose to look in the boxes in the left-hand cupboard
22 but not the boxes in the right-hand cupboard doesn't change
23 the analysis of whether looking at the boxes in the
24 left-hand cupboard was reasonable.

25 I feel like what you are saying is you'd like to

1 know why Mr. Maria chose certain search terms or why he
2 chose certain protocols with respect to how to approach the
3 search, but his "why" doesn't have any bearing on my
4 assessment of the objective reasonableness of what he did.

5 MR. WADE: No. What we'd like to know, Your
6 Honor, is the process that he went through in developing
7 those search terms --

8 THE COURT: Why?

9 MR. WADE: -- whether that was connected to the
10 warrant, how it was connected to warrant in his view at that
11 time, and whether he consulted with any of the other members
12 of the prosecution team in connection with the development
13 of those search terms.

14 THE COURT: Let's say that they consulted
15 fulsomely, wrung their hands exhaustively and believed
16 themselves to be doing everything right, but that I look at
17 the warrant compared with the searches that were done and
18 find that it's wrong. Their belief in its correctness
19 doesn't change anything. **Leon's** not applicable in this
20 context. It doesn't bail them out, right? Whether you
21 might find in other circuits that **Leon** applies in this
22 context or not, they are eschewing any reliance on **Leon**.

23 So if I found that they did all of the mental work
24 that you describe wanting to know about, that they thought
25 we were doing the right thing, but that they were actually

1 doing the entirely wrong thing, that's an objective
2 assessment that would lead to suppression. Why is the
3 reverse not true?

4 MR. WADE: Well, first, Your Honor, with respect
5 to **Leon**, to the extent they don't rely on **Leon**, we have
6 alleged that the warrant in this case lacks particularity,
7 and we think the warrant both in its entirety and --

8 THE COURT: Well, I think they're not necessarily
9 repudiating a reliance on **Leon** with respect to the warrant
10 itself. And I'll allow Mr. MacLaughlin to correct me if
11 I've misapprehended the extent to which they're relying on
12 **Leon**, but I understood them not to be relying on **Leon** with
13 respect to the execution of the search warrant, saying that
14 Mr. Maria's subjective intentions are irrelevant to that.

15 MR. WADE: Two issues, Your Honor.

16 One is, it's not just the reasonableness of the
17 execution of the warrant. We would submit to the Court --
18 now, of course, our briefing on this, Your Honor, occurred
19 before the disclosures of November 30th, and so that's part
20 of the reason why we've conferred and we need additional
21 briefing after this hearing to basically address the issues
22 that are before the Court now. Because respectfully,
23 there's a degree to which the Court is untethered outside
24 its -- I'm sure its own work, it's untethered by briefing to
25 arguments that relate to the execution of the search warrant

1 because we didn't know how the execution -- how the warrant
2 was executed because it wasn't disclosed to the defense. So
3 there's a degree to which additional briefing is going to be
4 required.

5 THE COURT: Absolutely.

6 MR. WADE: And if we want to come back after that
7 briefing and have another hearing, maybe we can consider it
8 then.

9 But some of the issues that we had anticipated
10 being before the Court in that hearing are not just the
11 reasonableness of the execution of the warrant, but we think
12 the conduct of the Government in this case amounted to a
13 flagrant disregard for the limitations imposed by the
14 warrant. And I believe, Your Honor, there is a circuit
15 split as to whether the subjective intention of the
16 executing officers is relevant to the analysis of flagrant
17 disregard. I believe, Your Honor -- and if I'm misstating
18 this, I -- we will clarify it for the Court -- I believe the
19 Eighth Circuit has not taken a position on that. And so --

20 THE COURT: Well, if I had to predict based on the
21 Eighth Circuit's relentless set of holdings that the
22 subjective belief of an officer is irrelevant, I would
23 predict that's not going to come down on your side, but I
24 might be just hypothesizing at this point.

25 MR. WADE: Your Honor certainly has more

1 experience litigating Fourth Amendment issues in the Eighth
2 Circuit than I do.

3 THE COURT: It's an uphill battle, I can tell you,
4 with respect to this issue, not with respect to all issues.
5 But with respect to the relevance and the subjective intent
6 of law enforcement, it seems to be -- but I look forward to
7 briefing on that. I don't think we need to -- I intended to
8 allow you post-hearing briefing no matter what, because I
9 think this record is going to be very interesting with
10 respect to your motion to suppress, but it's particularly
11 more necessary in light of your explanation that so much of
12 what has emerged since late November has really changed your
13 understanding of the landscape with the way the search was
14 executed and the way the warrant was applied, so I am
15 absolutely going to permit post-hearing briefing.

16 MR. WADE: And maybe briefly, Your Honor, I think
17 in a moment Mr. MacLaughlin wants to lay out a few things
18 about the hearing generally after we get past these
19 threshold issues. We'll give some additional -- some
20 preliminary thinking on that that we expect to be more fully
21 briefed just so the Court has a little bit greater sense of
22 where we're going.

23 To the extent that you want to hold a ruling on
24 the suppression -- or the motion to quash the subpoena until
25 that time, or hold that memorandum -- or hold that motion

1 open until after you have a more robust record, we wouldn't
2 object to that. We can go -- we're prepared to try to go
3 forward. Not knowing how this was going to go and having a
4 lot of evidence, we prepared to try to be flexible and we
5 might labor a little bit in front of the Court in light of
6 the uncertainty as to who the witnesses were going to be.

7 But we do think at its core, the Government's
8 conduct in this case, the objective facts -- the Court keeps
9 coming back to subjective interpretation and I think that's
10 an argument that's been proffered by the Government. And I
11 understand why they want to label our inquiry as purely
12 exploring Mr. Maria's state of mind, but our exploration of
13 the objective facts of what Mr. Maria did in connection with
14 the execution of the warrant we believe is relevant. He
15 accessed more -- he has more database activity in this
16 Relativity database that's at issue in the case than any
17 other officer, and we believe that we're entitled to explore
18 his objective conduct in connection with that.

19 This is sort of a rare circumstance, frankly, in
20 which a federal prosecutor is even involved in the execution
21 of a search other than maybe overseeing the execution of a
22 search. That's why we're in these unusual circumstances,
23 because the person who is involved directly in the execution
24 of the search is an Assistant United States Attorney as
25 opposed to an FBI agent, or a postal inspector, or an IRS

1 agent. And I think it's clear that if it was a postal
2 inspector, or an IRS agent, or an FBI agent, that we'd be
3 entitled to examine those witnesses and it shouldn't matter
4 that the person happens to be a federal prosecutor. That's
5 who the Government chose to execute the warrant. We're
6 entitled to explore those facts.

7 THE COURT: Okay.

8 MR. WADE: Briefly on the motion to compel, Your
9 Honor.

10 THE COURT: Thank you.

11 MR. WADE: What is before the Court -- the
12 Government has submitted documents pursuant to Rule 16
13 evidently while we were still conferring and before we moved
14 to compel. I assume that's because the Government believes
15 there may be some discovery obligation that it has with
16 respect to those documents and it is appropriately taking
17 prophylactic steps to make sure that it doesn't run afoul of
18 its discovery obligations, and we appreciate that.

19 To the extent that there is any question as to
20 whether the material that is in that case constitutes **Brady**,
21 it should be disclosed to the defense. We should not parse
22 that line in this case.

23 THE COURT: What's your best case to support the
24 idea that **Brady** applies to something that frames the
25 execution of a search warrant as opposed to substantive

1 evidence at trial? What's your best case? Because the
2 Government kind of flirts with the idea that **Brady** doesn't
3 apply to the preliminary stages of motions to suppress, not
4 my favorite argument.

5 MR. WADE: To be fair, Your Honor, the case law
6 that we had is cited in our papers and I don't have anything
7 to add beyond that. I think that in this case what we're
8 talking about directly relates to the admissibility of core
9 evidence that will determine whether or not Mr. Adams is
10 innocent or not.

11 THE COURT: Okay.

12 MR. WADE: And he has a fundamental right under
13 the Fourth Amendment and the Sixth Amendment to have access
14 to those materials, and of course the Fifth Amendment
15 pursuant to **Brady**.

16 The law is in the Eighth Circuit -- to be fair and
17 to be candid with the Court, the law as to whether or not
18 **Brady** applies in this context is not clear in the Eighth
19 Circuit. There is some case law that suggests -- outside of
20 the Eighth Circuit that suggests that it does apply.

21 I will note it's been the practice of the
22 Government in this case to not parse fine lines. I believe
23 it's the published policy of the United States Attorney's
24 Office for the District of Minnesota to err on the side of
25 disclosure.

1 THE COURT: I think it's hard to argue they
2 haven't erred on the side of pretty fulsome disclosure in
3 this case. I mean, I see a lot more disclosure around this
4 search than I have seen ever around the execution of a
5 warrant and how it was done. So I'm not sure that their
6 effort to withhold a very circumscribed set of information
7 on the basis of work product undermines their commitment to
8 full disclosure in this case as evidenced by your -- lots of
9 notebooks and myriad declarations and the all-day hearing
10 that we're about to undertake.

11 MR. WADE: In fact, Your Honor, there was a sea
12 change November 30th, 2016 with respect to that and we're
13 appreciative that we were now able to get these issues
14 before the Court.

15 THE COURT: 2017.

16 MR. WADE: 2017. I apologize, Your Honor.

17 THE COURT: There's two November sea changes? I
18 can't imagine.

19 MR. WADE: We're now in 2018. I always get
20 confused for a few months until I get my sea legs. There
21 was a sea change in that regard and we appreciate it, but
22 the materials that I think are before the Court are
23 relevant. The Department of Justice has a standard that
24 they employ when they search for attorney's files. Whether
25 or not --

1 THE COURT: Adherence to that standard doesn't
2 give rise to Mr. Adams having any particular cause of
3 action. It still goes back to me assessing the objective
4 reasonableness of the execution of the warrant.

5 MR. WADE: Exactly, Your Honor. We are not
6 contending -- in fact, we specifically noted in our brief
7 and don't dispute the case law cited by the Government with
8 respect to this not conferring a substantive right on
9 Mr. Adams. What it does do is set a standard that informs
10 the reasonableness of the execution of the warrant.

11 As we're going to discuss in a moment, Your Honor,
12 this is an unprecedented case because you have a prosecution
13 team executing a warrant on the files of a lawyer. It's
14 unprecedented.

15 THE COURT: Well, that's not unprecedented, right?
16 I mean, prosecution teams often execute search warrants on
17 the files of lawyers when lawyers are accused of criminal
18 conduct.

19 MR. WADE: They do, Your Honor, but the policy
20 that is at issue in this motion directly informs what they
21 do in that respect. And the policy -- I have either the
22 pleasure or the burden of having experienced this policy and
23 seen this policy employed in many other cases through my
24 career. And the way that that is employed in connection
25 with the conduct of a search is to err on the side of taking

1 all attorney files and giving them to a taint team, not
2 having the prosecution team parse and make the distinctions
3 about what may be privileged and what may not be privileged.

4 To use Your Honor's 1980s --

5 THE COURT: Analogy?

6 MR. WADE: -- analogy, if we were to walk into the
7 offices of U.S. Bank to seize materials covered by the
8 warrant and some of those materials were within a lawyer's
9 files, there would be special labeling that would be put on
10 those boxes and those materials would not go to the
11 prosecution team. They would go to a taint team and the
12 taint team would do the filtering of those materials --
13 typically they deal with defense counsel -- to get privilege
14 terms and to make sure that no privileges are violated. If
15 necessary, they might litigate before the court the
16 application of the privilege between the taint team and the
17 defense lawyers. But the idea that a prosecution team
18 itself does that filtering is unprecedented and
19 unreasonable, and the adherence to the policy with respect
20 to that is directly relevant to this case.

21 THE COURT: Okay. Thank you very much.

22 Mr. MacLaughlin, I've got just a couple questions.
23 I know you're eager to say something.

24 I'd like your response to the idea about the fact
25 that only Mr. Maria's declaration provides information

1 related to when the seizure occurred.

2 MR. MacLAUGHLIN: That's not true. There is in
3 fact an e-mail from Mr. Maria dated February 28th of 2017 in
4 which Mr. Maria asks our automated litigation support people
5 to do the final relevance cull, and that's going to be
6 admitted today when Mr. Zeitz is on the stand.

7 THE COURT: Has that e-mail been provided to
8 opposing counsel?

9 MR. MacLAUGHLIN: Yes.

10 THE COURT: Okay. Tell me about the relevance of
11 the compliance or noncompliance with the U.S. Attorney
12 practice and policy, the idea that this is unprecedented in
13 Mr. Wade's experience.

14 MR. MacLAUGHLIN: Well, it's not unprecedented in
15 any way. All the time lawyers get involved in reviewing the
16 raw pull from an e-mail provider of the results of a search
17 warrant. That's not just the province of agents these days.
18 We all get involved in doing that.

19 THE COURT: So we're kind of conflating two
20 different ideas. One is the relevance limitations that are
21 the subject of the particularity complaint and the other is
22 privilege issues that are the subject of the concerns about
23 privilege.

24 MR. MacLAUGHLIN: I don't know that we're
25 conflating them. We've been trying very hard not to. We've

1 got a Fourth Amendment world that we're going to be talking
2 about today and we have a privilege world that we're going
3 to be talking about today. Where and how those two worlds
4 meet is a little bit unclear under the case law.

5 What is clear is that the touchstone for Fourth
6 Amendment purposes is reasonableness. Whether we were
7 solicitous of the privilege -- and we were -- fits into that
8 reasonableness analysis, I don't know the answer to that. I
9 have not seen a case that says in the court's analysis of
10 whether the Government executed a warrant reasonably the
11 court can take into account whether the Government rode
12 roughshod over the privilege. Frankly, that might just be a
13 separate problem, not related to the Fourth Amendment, but
14 right now I'm not sure it matters, because we're going to
15 talk about all of that today.

16 THE COURT: Okay. Thank you. You can be seated,
17 sir.

18 MR. MacLAUGHLIN: I do have just two things to
19 add.

20 THE COURT: Okay.

21 MR. MacLAUGHLIN: Number one, I want the Court to
22 know that Williams & Connolly has all of the e-mails in this
23 case and they have them in various databases, and so if they
24 took a search term that Mr. Maria ran and ran it through
25 that database, I see no reason why they shouldn't be able

1 rather easily to find out what e-mails that particular
2 search pulled up.

3 Number two, I want the Court to know that the
4 prosecution team does not have those e-mails. We gave them
5 up in August of this year. We decided if you guys think
6 there are all these privileged materials in there, we are
7 going to dispossess the prosecution team of them, and that's
8 when Ann Bildtsen of our office became the taint lawyer. We
9 have no access to those e-mails.

10 THE COURT: And these are the segregated e-mails
11 that are the subject of the anticipated taint team.

12 MR. MacLAUGHLIN: We have access to none of them
13 at this point.

14 THE COURT: You have access to no e-mails.

15 MR. MacLAUGHLIN: Zero, none. We looked away in
16 order to, you know, create a better record here and make
17 sure that we went forward in a clean manner so that we could
18 litigate this thing in a clean way.

19 Point number --

20 THE COURT: Is it your intention not to access the
21 e-mails in preparation for trial or just not to have them
22 right now?

23 MR. MacLAUGHLIN: Just not to have them right now
24 while we're litigating over this, so we have no access to
25 those e-mails.

1 Now Mr. Wade used the verb that I don't think
2 accurately reflects the spirit with which we have been
3 communicating with each other. He said we have refused, the
4 Government has refused to tell them which documents were
5 viewed as a result of these searches. We declined to do
6 that and let me tell you why. We said --

7 THE COURT: I'm not sure there's a big difference
8 between refusing and declining.

9 MR. MacLAUGHLIN: Well, Your Honor, it was a
10 respectful conversation back and forth. We didn't just say,
11 "No, forget it. We're not going to show those to you." We
12 said, "Look, we don't have the e-mails. We'll give you the
13 Bates numbers of the documents that these searches kicked
14 out if you will tell us what documents they were. We'll
15 give you the Bates numbers, but you have to give us the
16 e-mails." They declined to give us the e-mails. They said,
17 "We don't want you to see any of that stuff." And so we
18 said, "Well, we don't want to give you the Bates numbers if
19 you're not going to tell us what they refer to."

20 THE COURT: But you wouldn't need that if you
21 hadn't deprived yourself of access to this stuff, right?

22 MR. MacLAUGHLIN: Correct.

23 THE COURT: I'm just trying to understand why you
24 would need them to tell you what the e-mails are, because
25 you have temporarily sequestered all of these, and so the

1 only way you could get -- you could also know what they were
2 knowing is if they told you.

3 MR. MacLAUGHLIN: Exactly. And so we've taken the
4 position with them, Your Honor, that: You ought to share
5 the e-mails with us unless they are actually privileged. We
6 don't claim any entitlement to look at anything that's
7 actually privileged, but we're certainly not going to give
8 you the Bates numbers. We're going to decline to do that in
9 light of your decision to decline not to tell us what
10 e-mails they refer to.

11 One other point. Mr. Maria is here. He'll be
12 here after the hearing, he's an officer of the court, and
13 like in any other case, he'll be here to answer questions
14 that the Court might have. And if Mr. Wade has questions
15 that he thinks the Court ought to ask Mr. Maria, that
16 communication can happen. That's relevant to the motion to
17 quash.

18 THE COURT: Thank you.

19 You're popping up to say something.

20 MR. WADE: Very briefly, Your Honor, with respect
21 to access to the e-mails.

22 First of all, the communications with
23 Mr. MacLaughlin have been nothing but cordial, and so to the
24 extent my choice of verbs suggested otherwise, I would like
25 the record to be modified and clarified and supplemented.

1 The Government -- because the database that they
2 have, the current database, is in our view full of
3 privileged information and irrelevant information, but the
4 particular concern is privileged information, because
5 Mr. Adams has an obligation as a practicing lawyer to take
6 steps to protect privileges, because those issues are going
7 to need to be litigated, and I anticipate, unfortunately,
8 months of litigation relating to the privileged materials
9 and the application of privileges, the applicability of
10 privileges. This is going to be a burdensome and
11 time-consuming process.

12 Because of that and because our motion was
13 directed at suppression of all the e-mails, we made the
14 decision back in October when we thought this was going to
15 be before the Court shortly in November, that we should just
16 wait to get a ruling from the Court on the motion so that we
17 don't spend all that time and effort and energy litigating
18 and doing the pick-and-shovel work through the database to
19 deal with all the vast privilege invasions if everything's
20 going to be suppressed.

21 Now, if we knew that this was going to -- that all
22 these additional disclosures were going to come out and that
23 this was going to take several additional months, maybe we
24 would have started on that process. And part of --
25 earlier -- and part of what we can do going forward with the

1 schedule we talked about with Your Honor is try to build in
2 some simultaneous activity recognizing resource limitations
3 of the defense and our need for sleep and rest occasionally,
4 but we made the judgment not to do that. As a result, we
5 also agreed in our cordial conversations with Government
6 that we would not offer specific e-mails in this hearing
7 that are within the database, because it wouldn't be fair.

8 THE COURT: Because you're recognizing that you
9 you get to access it right now and they do not.

10 MR. WADE: Right.

11 THE COURT: Okay.

12 MR. WADE: And so the record's clear, the reason
13 that no specific e-mails are going to be offered; for
14 example, e-mails that are beyond the scope of the warrant
15 that are within the seized database, or documents that the
16 prosecution team previously had access to for a long time
17 but then culled out at the last minute, the reason none of
18 that's going to be offered is because we have an agreement
19 with the Government that we would not offer those materials.

20 If the Court comes to the view that it thinks that
21 that is necessary in how -- in a determination of this case
22 in terms of we have to go document by document to identify
23 each and every document that's beyond the scope of the
24 warrant -- and there are a lot of them, tens of thousands --
25 we'll have to deal with that and figure out how to present

1 that to the Court in a way that doesn't require the Court to
2 take the rest of its year dealing with it.

3 THE COURT: We can cross that bridge. I mean,
4 what I understand you to be saying is that you have filed
5 only part of the motions that you intended to file on the
6 schedule that was set because you are seeking a complete
7 suppression order, but if you don't succeed in getting that,
8 you intend to file a second wave of motions seeking
9 item-by-item suppression both for privilege and for
10 exceeding the scope.

11 MR. WADE: I think -- respectfully, Your Honor, I
12 think that -- I didn't view it as a -- that as a
13 supplemental motion, because our view is everything should
14 be suppressed.

15 THE COURT: Right. But you could have -- I mean,
16 I -- I think I'm borrowing worry and we need to move on, but
17 I'm troubled by the idea that there are different approaches
18 that you could take to suppression, that you could have said
19 the remedy for this excessive execution of the warrant --
20 your position is that the remedy is that everything should
21 be suppressed. But if you fail at that, you're going to try
22 again and say, okay, maybe that's not the remedy, but the
23 remedy is that an overbroad execution of a warrant should
24 have individual suppression and then endeavor to demonstrate
25 that.

1 Is that your planned next move?

2 MR. WADE: Well, Your Honor, frankly, we were
3 prepared -- I may even have some documents in my
4 briefcase -- to offer evidence of specific e-mails that are
5 beyond the scope of the warrant that are within the
6 prosecution team's database.

7 It didn't -- we didn't know what the Government
8 had done to execute the warrant until November 30th, and
9 then we've all been shooing a galloping horse since then to
10 get this before the Court. We didn't -- we're not doing
11 that because the Government objected to our doing that.
12 They objected to our offering specific e-mails and so we
13 agreed not to.

14 But I think given the magnitude of the invasions
15 in this case, the idea that the burden would be on Mr. Adams
16 to go document by document through tens of thousands of
17 documents and identify each and every document that's beyond
18 the scope I think shouldn't be required. The Government had
19 an obligation to exercise the search warrant in a way that
20 is reasonable and it didn't do that. Their failure to meet
21 their burden shouldn't flip the burden in this case onto
22 Mr. Adams given the magnitude of the evidence that we're
23 talking about here.

24 THE COURT: Okay. Thank you very much.

25 I am going to for now grant the motion to quash

1 and deny Mr. Adams' team's effort to have Mr. Maria testify
2 in this matter.

3 The reason is that Mr. Adams has not met either
4 prong of the test that governs this question specifically,
5 the vitality to the question before the Court and the
6 uniqueness of Mr. Maria as a source.

7 The thing that I do think Mr. Maria might be able
8 to uniquely provide is his very own private, subjective
9 reasoning for doing what he did which doesn't play into my
10 calculus.

11 My careful review of the declaration submitted, as
12 well as the substantial information that I've already
13 received, suggests that there's an unusual amount of
14 sunshine and transparency around how this search was
15 executed that is going to enable me to make a good decision
16 about whether it was executed properly or not. I'm going to
17 hear about that all day.

18 So it is a unique and unusual circumstance. I
19 would not call it completely unprecedented. I don't think I
20 share Mr. MacLaughlin's memory that it has not been done in
21 the two decades that I've been here, but it is certainly
22 extremely rare and the showing has not been made in this
23 case.

24 I am also not going to require the document to be
25 produced that is the subject to the motion to compel. It is

1 very clearly work product and subject to nondisclosure. For
2 that reason I'm not going to find that **Brady** doesn't apply
3 in the context of pretrial stages, because I find that if it
4 is true to be troubling. And I don't need to rely on that
5 in this case, because I can certainly say that, again, the
6 analysis that I have to make is about the execution of the
7 search warrant and whether it's objectively reasonable. We
8 get to put that to the test in part by comparing what was
9 done with the U.S. Attorneys' Practice Manual. And while
10 that might not give rise to an individualized cause of
11 action by itself, it will certainly inform the
12 reasonableness of the execution, but we don't need to have
13 private discussions about compliance with that in order to
14 assess the objective reasonableness.

15 So let me say, however, that both of those are
16 not -- I'm not inviting more briefing unless there's
17 something real unique that occurs. I've got a truly
18 extraordinary amount of briefing and the promise for an
19 enormous yet to come to address these issues.

20 But I am going to keep this in mind all day, and
21 if the development of the record suggests either that
22 Mr. Maria's testimony is necessary or that the document at
23 issue needs to be disclosed, I'm reserving my right to
24 change my mind, but for now that is the ruling as to both
25 motions and I'll be capturing it in a relatively brief order

1 sometime after the hearing.

2 With that said, let's talk next steps.

3 MR. MacLAUGHLIN: Your Honor, it is my suggestion
4 that I talk for a few minutes about the hearing we're about
5 to have, about its scope, about what we sort of intend to
6 show the Court, put things in perspective, to get Mr. Wade
7 to respond if he sees things differently, and then to get
8 going with the witnesses. Is that all right?

9 THE COURT: That sounds great.

10 MR. MacLAUGHLIN: Okay.

11 So it seems to me, Your Honor, that you -- I can
12 tell from what you've already said that you are very clear
13 on what the purpose of this hearing is. I've just put on
14 the screen the Attachment B to the warrant that Judge Rau
15 issued. I don't know if the Court --

16 THE COURT: I've got it.

17 MR. MacLAUGHLIN: -- can see that.

18 So the membrane here from having nothing to having
19 the database from Yahoo is covered by the general briefing
20 in the case. That's not what we're talking about here
21 today.

22 What we are talking about today is --

23 THE COURT: And just to be clear, is Attachment B
24 that you're putting on the screen the same as Government
25 Exhibit Kroells 9?

1 MR. MacLAUGHLIN: Yes, it is, exactly.

2 THE COURT: Thank you.

3 MR. MacLAUGHLIN: So what we're talking about
4 today -- and I flipped over to page 2, Your Honor -- is this
5 (indicating) membrane here. The question is did we get from
6 here to here in a reasonable manner. That's what we're
7 going to be talking about today, how did we get to part two
8 of Attachment B.

9 I want to flip to the end and say that there's
10 another line here, and there's a couple things that happened
11 after we get to part two after we do the search, and one is
12 production (indicating). My writing is awful, but that's --
13 it's supposed to say "production." We're not talking today
14 about production.

15 The Court saw in the attachments that there were
16 errors made in production. We misdescribed some of the
17 stuff we were turning over, there was back-and-forth and
18 some confusion. Production is quite aside from our
19 execution of the warrant and we're not talking about that
20 today.

21 Finally, there's the other issue that we're not
22 addressing today, which is taint. I think that Mr. Wade
23 when he says we're going to have more litigation later is
24 going to be really litigating about whether the prosecution
25 team was tainted. Since we don't even have the e-mails,

1 we're not going to get to that today. So the narrow topic
2 today is the journey that the Government took to go from
3 part one of Attachment B to part two of Attachment B.

4 May I approach the white board?

5 THE COURT: Yes.

6 MR. MacLAUGHLIN: So let me put this a little bit
7 differently. And I want to have this up here for the
8 witnesses and my handwriting is bad, but the basic facts are
9 that on March 7th (indicating) of '16, we received 146,522
10 e-mails from Yahoo, and they were on a thumb drive as the
11 Court is aware.

12 Then on May 2nd of 2016, a mechanical filtering
13 process was completed by what we call the LTSC, the
14 Litigation Technical Support Center down in South Carolina.
15 What they did is, they took this 146,522. They applied
16 search terms designed to cull out privileged material. That
17 resulted in the removal of 33,161 documents, with the result
18 that the prosecution team was granted access to 113,361
19 documents.

20 So effectively, Your Honor, this is the day,
21 May 2nd of 2016, that the prosecution team was granted
22 access for the first time generally in the Relativity
23 database to search around in the for-review e-mails.

24 The evidence here is going to show that the
25 mindset of the team was nonetheless to be vigilant about

1 privileged materials. This filtering process was known not
2 to be perfect. In fact, the Court is going to see an e-mail
3 from AUSA Maria to the team saying: Look, we've done this
4 filtering process, might not be perfect, be on the lookout.

5 And indeed, more were spotted, with the result
6 that on June 7th of 2016, there was another cull starting
7 with the 113,361. They pulled out another 1,494, and the
8 result of that was now the team had access to 111,867
9 documents. So as time went on, this is what the prosecution
10 team was searching (indicating) through.

11 On April 7th of last year, the final relevance
12 cull was completed pursuant to a request in an e-mail by
13 AUSA Maria dated February 28th. And here what we had was
14 111,867, less the relevance cull pull, which was 68,940, and
15 that left 42,927.

16 So as of today, those are the e-mails that are in
17 our for-review database. This (indicating) number is 29
18 percent of the raw take.

19 And there's going to be other evidence, Your
20 Honor, that the total number of actual unique document views
21 in this case is 9,252 document views. Mark Zeitz is going
22 to testify about that.

23 What that means, Your Honor, is that of this
24 146,522 documents, only that number, that number of
25 documents (indicating), were viewed by the prosecution team.

1 So the issue in this case is whether our journey
2 from that number to this (indicating) number was reasonable.

3 THE COURT: Okay.

4 MR. MacLAUGHLIN: That's what we're talking about
5 today. Not about production, not about taint, simply about
6 the journey from the 146 down to the 42.

7 So, for Fourth Amendment purposes, Your Honor, the
8 touchstone is reasonableness. And as I mentioned earlier,
9 there are issues about privilege here. We're going to talk
10 about those two. They are in the mix somewhere.

11 The evidence at this hearing is going to show that
12 the --

13 THE COURT: I'm not actually looking for opening
14 argument if that's what you're segueing into.

15 MR. MacLAUGHLIN: Just to kind of -- I'd like to
16 hit the highlights of the law. I'll be very short then.

17 THE COURT: Okay.

18 MR. MacLAUGHLIN: You're going to see that we
19 executed this warrant carefully. You're going to see that
20 we executed it reasonably. You're going to see that we
21 executed it diligently. You're going to see that we were
22 solicitous about the nature of Section 2 of Attachment B,
23 and that we were solicitous about the privilege. All of
24 that I think is going to come through in the testimony.

25 So let me say a word about reasonableness. There

1 is an old case -- you mentioned the two-cabinet example from
2 1980. In 1976 the Supreme Court decided **Andreson vs.**
3 **Maryland**, and in that case the court noted that in any
4 search warrant involving a lot of pieces of paper, the
5 Government at least cursorily -- and I say that because
6 that's the phrase that comes from that case that reappears
7 in subsequent case law -- the Government at least cursorily
8 can look at every single piece of paper available to look at
9 in order to determine what's within the scope of the
10 warrant. And there's no law anywhere that suggests that the
11 prosecution team itself can't do that, and there's no Fourth
12 Amendment jurisprudence that requires *ex ante* restrictions
13 on how that process is done. The touchstone is one of good
14 faith and reasonableness -- not good faith, reasonableness.
15 Any argument that that's been somehow turned on its head by
16 the advent of the electronic age and just not true.

17 Rule 41 itself contemplates explicitly that in the
18 context of e-mail search warrants there's going to be a
19 two-step process. The Government has to get the stuff first
20 and then it has to figure out within it what's relevant.
21 And the notes, the committee notes, note themselves:

22 "A substantial amount of time can be involved in
23 the forensic imaging and review of information. This is due
24 to the sheer size of the storage capacity of media,
25 difficulties created by encryption" and so forth. "The rule

1 does not prevent a judge from imposing a deadline for the
2 return of the storage media"

3 However, the committee decided not to impose a
4 time frame because of the varying levels of complexity
5 presented to the Government in making the journey from part
6 one to part two of a search warrant like this.

7 Here particularly, Your Honor -- I've never dealt
8 with a client. I know your background is as a defense
9 lawyer. I've never dealt with a client. I can't imagine
10 what that would be like.

11 I want the Court to know that we don't do search
12 warrants because we already know everything about the case.
13 We do search warrants because we want to know more about the
14 case. And there's a tremendous learning curve involved in
15 executing a warrant, in a case like this particularly.

16 This Government team jumped in, it started looking
17 at stuff, and there was a learning curve, an arc of the case
18 that happens in every complex case. It takes time to figure
19 out as a Government team which of 146,000 e-mails are
20 relevant. That process in this case was accomplished in
21 just under a year, which is pretty fast.

22 I'll point out too and the Court is going to hear
23 that the people involved in this case were busy, had other
24 demands, and in a complex case like this the agents are far
25 from fungible.

1 I want to make another point, that the touchstone
2 being reasonableness means the touchstone is not perfection.
3 Williams & Connolly says -- and I guess I don't have any
4 reason to dispute because I don't have the e-mails -- that
5 there are a lot of irrelevant e-mails remaining in the
6 42,927. I don't know if that's true or not, but the fact
7 that we didn't succeed in pulling everything out that isn't
8 relevant in no way even hints at suppression here. In fact,
9 if they would cooperate with us and tell us which ones -- we
10 don't have time to look at e-mails about Mrs. Adams' 50th
11 birthday, for example. We don't want to look at that stuff.
12 We want to look at the stuff that's relevant to our case.
13 It's reasonableness, not perfection.

14 Now, on privilege, just a few words here. Much
15 has been said about Mr. Adams being a lawyer. He is a
16 lawyer. He was a partner at Adams Monahan. He's a fairly
17 prominent lawyer too. He was in fact general counsel from
18 time to time to some of these victim companies. And
19 obviously we have no interest and had no interest in
20 intruding on the relationship he had with his own clients.

21 And so therefore -- and I want to make this very
22 clear -- as the witnesses will testify, he had an e-mail
23 account at Adams Monahan which we decided not to search. It
24 wasn't that we thought there wouldn't be anything in there,
25 as Adams Monahan represented the victims. It's just that we

1 didn't want to get into a morass of his relationship with
2 his own clients.

3 Now, as we go through today -- and I know the
4 Court knows this is getting a little long, but the privilege
5 we cared about the most in going through these e-mails was
6 Mr. Adams' privilege with his lawyers. We surely didn't
7 want to intrude on his clients' privilege, but we really
8 didn't want to intrude on his privilege with his lawyers.
9 And we were aware that there had been an SEC investigation.
10 We knew he was represented in connection with that
11 investigation. We knew that the same underlying facts that
12 gave rise to the indictment were at issue there, being sued
13 by some angry investors. We knew all that and we knew he
14 had lawyers. The real push by the prosecution team, if
15 there was a main focus, was not to look at those e-mails.

16 Okay. Now, this is important, Your Honor. I want
17 to make this -- this is a point I want to make very clear.

18 The victims of this case are Apollo, Apollo
19 Gemstone, Private Scio, and the people that invested in
20 those companies. They came up with some kind of chemical
21 vapor deposition way of making diamonds, which sounds pretty
22 cool to me, and the gravamen of the indictment is he got
23 money to put into those companies and then didn't put the
24 money into the companies.

25 So there are a lot of communications in this case

1 between Mr. Adams and the people at those companies,
2 principally a couple of people, three or four people, the
3 Linares, who I think are his in-laws. Those are the
4 privileged communications. They're communications with
5 victims, okay? It seems to me that Mr. Adams is trying to
6 hide behind his law license.

7 THE COURT: We're not there yet. We're not asked
8 here to discuss whether individual communications with
9 particular humans are or aren't privileged.

10 MR. MacLAUGHLIN: I think that is part of what's
11 going to happen, that there is an argument that we should
12 not have looked at -- and thus unreasonably executed the
13 warrant -- communications that he had with employees of
14 Private Scio and employees of Apollo. I think that is going
15 to be in the air today, and I want to make clear for the
16 Court that that in our view is a completely different matter
17 from Mr. Adams talking to his own lawyers.

18 Moreover, I don't understand how he has any
19 standing to assert the attorney-client privilege of those
20 entities. As we know, the attorney-client privilege, it's
21 one person alone, the client. Lawyers assert it all the
22 time, but they do it vicariously on behalf of their client.

23 So there's that. I think we've covered a lot of
24 the rest of it.

25 Your Honor, we do intend to offer some exhibits.

1 I put them up there in front of you.

2 THE COURT: How many witnesses are you going to
3 call, Mr. MacLaughlin?

4 MR. MacLAUGHLIN: We're hoping to call three
5 witnesses. There's some question about whether two more
6 will be needed. It's our view that Brandon Belich -- and so
7 far on the privilege he really ought not be called, and the
8 Court has solved the David Maria issues, so at most four
9 witnesses.

10 So we've talked about ground rules. One of those
11 is that if they have e-mails we don't, we've agreed not to
12 use them. I think it may arise in the course of the hearing
13 that if he wants to offer some for the Court's
14 consideration, we object to that unless they're shown to us.
15 If they're not privileged, it seems to me we ought see them.

16 With respect to the exhibits we'll be offering,
17 we've talked about exhibits at the hearing and we agree that
18 the Court certainly is entitled to and should consult with
19 anything that's been filed on ECF.

20 The order of proof today will be Christine
21 Kroells, and then Jennifer Khan, and then if Brandon Belich
22 isn't called, Mark Zeitz. That's how we want to go forward.
23 These gentlemen are here to answer questions as officers of
24 the court.

25 THE COURT: I am not going ask Mr. Maria any

1 questions that are going to be relevant to my decisionmaking
2 today having decided that he couldn't testify. I don't want
3 to get into a position of allowing the Government to be able
4 to make proffers about things and not allowing the
5 opportunity for cross-examination. So at least my initial
6 instinct is not to ask Mr. Maria any questions. I don't
7 want to have a quasi-witness scenario where the defendant
8 doesn't get to respond. We can revisit that if I've been
9 improvident, but that's my intention.

10 Mr. Wade, can I hear from you a little bit? Any
11 objection to the *en masse* admission of all of the proffered
12 Government exhibits?

13 MR. WADE: I don't, Your Honor. The rules of
14 evidence I don't think apply in an evidentiary hearing such
15 as this.

16 THE COURT: I just find it's more efficient rather
17 than going through foundational questions that we probably
18 don't need simply to have you agree there's no objection.
19 It seems much more efficient to say all of the proposed
20 Government exhibits are admitted right now if you have no
21 objection.

22 MR. WADE: I agree and would ask for the same
23 courtesy from the Government. To the extent that the
24 Government doesn't like some of our exhibits, they're
25 obviously welcome to make whatever argument they want to

1 make about them or they be stricken. As you can see, we
2 have a mountain of information we're hoping to leave with
3 the Court rather than carry home to Washington.

4 THE COURT: Binders of exhibits that I don't have
5 yet.

6 MR. WADE: We have not offered those up, but we
7 can do that, Your Honor. It's voluminous. We can either do
8 it as the witnesses come up -- we essentially have
9 sequentially -- one core binder of sequentially numbered
10 documents which with the Court's permission I'll offer.

11 THE COURT: Thank you. I'm not going to decide on
12 their admission yet. I assume you've provided them to
13 opposing counsel.

14 MR. MacLAUGHLIN: Yes.

15 MR. WADE: We gave a copy to opposing counsel this
16 morning. We intend to put a book up on the stand.

17 THE COURT: And have the witness talk about them.

18 MR. WADE: There are then some additional binders
19 that relate to specific witnesses that are actually exhibits
20 that are reflected in -- they're so voluminous we didn't
21 include, where one binder is one exhibit, that is, for
22 example, the database activity of Postal Inspector Kroells.
23 So we have that all in a binder available in case she has
24 any questions about what we did on a particular day.

25 THE COURT: Are there any binders that you intend

1 to introduce today that have not been provided to the
2 Government?

3 MR. WADE: We certainly -- the Government has the
4 information -- I think the short answer is no, Your Honor.
5 There are binders that we haven't technically handed over to
6 the Government, but this is information that's extracted out
7 of documents they gave to us, so the filtered spreadsheets,
8 for example, and we are intending and have already given
9 some of those to the Government. As soon as they want them,
10 they can --

11 THE COURT: Why don't we do that right now.

12 MR. WADE: Sure.

13 THE COURT: Thank you.

14 (Documents provided to Government counsel)

15 MR. WADE: And for the record, Your Honor, I'm
16 offering up three exhibits that are in three different
17 binders, Defense Exhibits 78, 80 and 86. These are in
18 addition to the shorter compilation that's already before
19 the Court.

20 THE COURT: Okay. Do you have a list of the
21 exhibits?

22 MR. WADE: I believe we have a copy that we can
23 provide to the Court.

24 THE COURT: Okay.

25 MR. WADE: And certainly --

1 THE COURT: In general, just in our future
2 practice -- and I know we've been under the gun, but it's
3 really helpful if you can provide the exhibits at all in
4 advance. And also if you can get us an exhibit list that we
5 can provide to the court reporter to work from. If I don't
6 get it until after the hearing, that's fine, but it helps us
7 create a more fulsome record than me trying to figure out
8 what to call each of these exhibits.

9 MR. WADE: Absolutely, Your Honor. And we'll
10 prepare that list and either offer it up at a break or after
11 the hearing.

12 THE COURT: And e-mail it to opposing counsel as
13 well.

14 So it's my intention, Mr. MacLaughlin -- go ahead
15 and walk around --

16 MR. WADE: If I may approach again.

17 THE COURT: Please.

18 Mr. MacLaughlin, do you have any objection to the
19 admission for the purpose of this hearing only of the
20 binders?

21 MR. MacLAUGHLIN: No. I obviously haven't had a
22 chance to look through them carefully, but I have a high
23 degree of confidence that they have their origin with our
24 disclosures and that we know what they are and have seen
25 them and --

1 THE COURT: It seems like they're overwhelmingly
2 Bates stamped.

3 Okay. So I'm going to admit all exhibits from
4 both sides.

5 Come on up if you need to. Just stand up here.
6 I'm just not that formal.

7 We don't need to do foundational questions except
8 as necessary to convince me that's worth attention, but you
9 don't need to do the: "And what is this? Is it kept in the
10 normal course of business?" Let's circumvent all of that
11 unless it's necessary to the consideration of the exhibit.

12 MR. WADE: Very good, Your Honor.

13 THE COURT: Does that make sense?

14 MR. MacLAUGHLIN: Yes. So Mr. Zeitz will be on
15 the stand later. I have been provided by my colleague with
16 a number of exhibits related to his testimony, and they are
17 Zeitz 1 through Zeitz -- a number of Zeitz ones here.

18 THE COURT: Okay. Let's make sure to get copies
19 to opposing counsel.

20 MR. MacLAUGHLIN: Zeitz 1 through 10, and then we
21 also have a general -- the waiver e-mail, this General 1.

22 MR. WADE: We have been provided copies, Your
23 Honor.

24 THE COURT: Okay. Great.

25 MR. MacLAUGHLIN: So we'd offer these as well.

1 THE COURT: I'll admit all of those. I'd also
2 seek from the Government an exhibit list --

3 MR. MacLAUGHLIN: Yes, Your Honor.

4 THE COURT: -- and provide it to opposing counsel
5 as well.

6 MR. WADE: And just for the record and for the
7 benefit of all the parties as we go through the hearing this
8 morning, our documents are tabbed according to the exhibit
9 number and they're stamped, but in addition to that, in the
10 case of all but the three big binders --

11 THE COURT: The fat ones? Yes.

12 MR. WADE: We have Bates labeled in the lower
13 right-hand corner "DSM" for "Defense Suppression Motion" so
14 that --

15 THE COURT: Okay. These are the not the
16 Government's Bates stamps.

17 MR. WADE: No, the DSM -- that's why I wanted to
18 make the record clear, Your Honor. The DSM are Defense
19 Suppression Motion Bates stamps. We added them, just in
20 experience in proceedings like this, sometimes it's hard to
21 refer to a page number --

22 THE COURT: Okay.

23 MR. WADE: And we thought it would be helpful to
24 have a page number to make the record clear.

25 THE COURT: Thank you.

1 MR. MacLAUGHLIN: And, Your Honor, if I may
2 approach, I've got Zeitz 1 through 10 and also General 1.
3 It's called General 1 because it's just sort of a
4 free-floating exhibit.

5 THE COURT: That's fine.

6 All right. We are going to take a three-minute
7 recess. Everybody can rearrange themselves or make a quick
8 restroom run and then we'll start with testimony. It's my
9 hope that we take a pretty brief lunch break. I know that
10 everybody's going to be -- it's going to be a long day. But
11 please let me know if anybody needs a break at a time that I
12 didn't anticipate. I'm perfectly happy to make that happen.

13 MR. KOKKINEN: Briefly, Your Honor.

14 THE COURT: Yes.

15 MR. KOKKINEN: Mr. Maria and I have another case
16 that has a motions hearing in front of Judge Noel at 1:30
17 today, so I plan on not returning back to the courtroom, to
18 this courtroom, at about 12:30 so I can go prepare for and
19 handle that hearing in front of Judge Noel, and upon its
20 conclusion, if we're still going, I'll come back in.

21 THE COURT: I predict we might be, so -- okay.
22 We'll take a really brief recess and then we'll get started.

23 Thank you.

24 (Recess taken at 10:25 a.m.)
25

1 (10:35 a.m.)

2 IN OPEN COURT

3 THE COURT: All right. Let's get going. I needed
4 some coffee. You guys can do the same after lunch, please.

5 All right. Let's go.

6 MR. MacLAUGHLIN: We're operating on adrenaline.

7 THE COURT: Yeah, I can tell. It's going to fade
8 soon, though.

9 MR. MacLAUGHLIN: Yes, I know. We're going to get
10 jittery.

11 The United States calls Christine Kroells.

12 THE COURT: I've been know to accidentally make a
13 defense objection or two, so I'll try to rein that in to
14 make sure --

15 MR. WADE: We have no objection to your doing so,
16 Your Honor.

17 (Laughter)

18 **CHRISTINE KROELLS, GOVERNMENT'S WITNESS, SWORN**

19 THE COURT: Thank you.

20 Please be seated and please state your full name
21 and spell your last name for the record.

22 THE WITNESS: Christine Kroells, K-R-O-E-L-L-S.

23 THE COURT: All right. You can proceed,
24 Mr. MacLaughlin.

25 MR. MacLAUGHLIN: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. MacLAUGHLIN:

Q. Ms. Kroells, good morning.

A. Good morning.

Q. What do you do for a living and how long have you been doing it?

A. I'm a United States Postal Inspector and I have been so for about 14 years.

Q. And what kind of cases do you work as a postal inspector?

A. Mostly mail fraud investigations involving investment fraud schemes and the like.

Q. And may I call you Inspector Kroells as we go through the hearing?

A. Yes.

Q. I want to start, Inspector Kroells, by asking you, in your 14 years of experience, have you been from time to time the affiant on search warrants?

A. Yes, I have.

Q. I don't mean to pin you down. How many times do you think you have written an affidavit and gone and seen a judge to swear it out?

A. Oh, I don't know. I've helped out on numerous search warrants, I guess. Maybe two to three of those a year, but I don't know how many I've actually been the affiant on.

1 Q. Okay. Now, Judge Menendez has been at the receiving end
2 of being visited by agents, but just very briefly, can you
3 describe the process by which you draft a warrant affidavit
4 and work with the United States Attorney's Office in
5 completing that process?

6 A. So usually the way I do it is, I start out by writing an
7 affidavit, putting as many facts as I think are relevant to
8 the investigation and to probable cause for the search
9 warrant into this affidavit, and then I send it to the AUSA
10 who I'm working with and then I work with that person to
11 refine it.

12 Q. Okay. It's fair then to say that in every case in
13 Federal Court where you present an affidavit, the United
14 States Attorney's Office has helped you draft it and has
15 reviewed it.

16 A. Yes, that's true.

17 Q. And to the extent, Inspector Kroells, that something
18 needs to be attached to that warrant or that something else
19 needs to go along with that warrant, how do you get help in
20 that regard?

21 A. The AUSA helps me with that.

22 Q. I'd like to now shift away from being the affiant for a
23 second to actually executing warrants, okay?

24 A. Okay.

25 Q. Have you been involved in executing premises search

1 warrants?

2 A. I have.

3 Q. And order of magnitude, again, not holding your feet to
4 the fire.

5 A. Again, like I said, probably two to three a year that
6 I've either had or helped with, give or take.

7 Q. Okay. Have you ever been involved in a premises search
8 warrant where one of the things that you actually grabbed
9 was a computer?

10 A. Yes, I have.

11 Q. And when that happens, when a computer is actually
12 grabbed -- well, sometimes they're imaged on-site, right?

13 A. Yes, they are.

14 Q. When they can't be imaged on-site, what happens?

15 A. When they can't be imaged on-site, we take the actual
16 device and try to get it imaged and then either get it back
17 to the person or whatever we're supposed to be doing with
18 it.

19 Q. But the bottom line is, when you go into somebody's
20 house and take a computer back to your office, that person
21 is dispossessed of that computer, correct?

22 A. That's correct.

23 Q. They can't use it because it's gone.

24 A. That's correct.

25 Q. I want to talk to you a little bit now about e-mail

1 search warrants.

2 How many times have you been involved in preparing
3 and serving on an e-mail provider like Yahoo! an e-mail
4 search warrant account?

5 A. I don't know how many times. Several.

6 Q. Okay. You've got experience in that field.

7 A. I have, yes.

8 Q. And in your experience -- all my questions today are
9 going to be in your experience -- when you execute a warrant
10 and get e-mails from a third-party provider like Yahoo! or
11 Hotmail or whoever, does that dispossess the person of those
12 e-mails?

13 A. No, it does not.

14 Q. In fact, do you sometimes seek in connection with
15 obtaining a warrant a nondisclosure order so they don't even
16 really know that the e-mails have been pulled?

17 A. Yes, a lot of times we get a sealing order.

18 Q. Okay. I want to talk to you now, Inspector Kroells,
19 about your training and experience in reviewing documents,
20 whether from an e-mail search warrant or a physical premises
21 warrant. When you've got lots and lots of documents and you
22 think some of them might be privileged, tell the Court what
23 you do to shield yourself from exposure to privileged
24 materials.

25 A. Well, I try to be careful in my searching, and if I do

1 find potentially privileged documents, I stop reviewing it
2 and let my AUSA know. So this is, you know, I've been
3 finding a lot of volume of potentially privileged or not a
4 lot so they can tell me how I should proceed after that.

5 Q. Inspector Kroells, may I ask you to take that microphone
6 and just pull it a little closer to you? I'm probably the
7 hardest of hearing in the courtroom, but it would help me,
8 anyway.

9 How do you identify what you call a potentially
10 privileged document? What are the signs of that? What are
11 its characteristics that cause you concern?

12 A. Well, as we're beginning a case and learning about the
13 case, we start to learn who is represented by attorneys and
14 the names of those attorneys and that's what we're looking
15 out for.

16 Q. Okay. Now, in this case you've been working on the case
17 involving Prof. Adams, correct?

18 A. Yes, I have.

19 Q. And in working on this case and in interacting with the
20 prosecution team and in particular when you were executing
21 this warrant, were you aware that there was a prior SEC
22 investigation of Mr. Adams?

23 A. I was aware of that.

24 Q. And were you aware that the facts underlying that
25 investigation were the same facts or similar facts to the

1 ones that gave rise to the indictment here?

2 A. Yes.

3 Q. And similarly, were you aware that Mr. Adams had been --
4 that Prof. Adams had been sued by some number of angry
5 investors related to this case?

6 A. Yes.

7 Q. And there again, were you aware that he was represented
8 by lawyers in connection with those matters?

9 A. Yes.

10 Q. As you went through the stuff in this case, did you have
11 in your mind, were you vigilant to avoid reviewing such
12 documents?

13 A. Yes, I was.

14 Q. Put more meat on that bone. Tell us how, what you did,
15 what you avoided and how you avoided it.

16 A. So generally what I do when I'm looking at e-mails is, I
17 do kind of a cursory glance at the e-mail, see if anything
18 pops out at me, any names that I know of, potential
19 attorneys representing, for example, Mr. Adams in this case.
20 If I see those names, then I confirm in the e-mail headings
21 that that person is on that e-mail and the people on that
22 e-mail and then report that back to my AUSA, saying either
23 in this case those need to be pulled out of the Relativity
24 project or we need to do something to make sure that we're
25 not viewing those items.

1 Q. Okay. So if I'm hearing you correctly, it sounds like
2 you do a number of things. You see something that might be
3 privileged. Number one, you stop looking at it.

4 A. Correct.

5 Q. Number two, you flag it and segregate it.

6 A. Correct.

7 Q. Number three, you write down or memorialize why you
8 think it might be privileged.

9 A. Correct.

10 Q. And four, you communicate the fact that you've seen this
11 document to the AUSA in charge of the case.

12 A. Correct.

13 Q. Is that essentially correct?

14 A. Yes.

15 Q. Okay. I want to talk to you a little bit about the
16 concept of a taint team, okay?

17 A. Okay.

18 Q. In this particular case, no taint team was employed,
19 correct?

20 A. Not until much, much later.

21 Q. Not until August of this year.

22 A. Correct.

23 Q. Okay.

24 MR. MacLAUGHLIN: May I walk over to the white
25 board, Your Honor?

1 THE COURT: Of course.

2 Q. So I want to ask you a question, Inspector Kroells, and
3 the best way I know how to ask it is to write it on this
4 board, and I've lost my -- here it is.

5 So you understand you're the one that got a thumb
6 drive with all of those -- this raw take, right, 146,522
7 e-mails, correct?

8 A. Okay. I did receive a thumb drive. I don't remember
9 how many e-mails exactly were on it at the time.

10 Q. Okay. Well, I'm endeavoring to be accurate and precise.
11 If I'm not, I'm not.

12 And you knew that there was a mechanical pull out
13 of those 146 to try to segregate out privileged e-mails,
14 right?

15 A. Yes.

16 Q. What do you know about the search terms that were used,
17 if anything, to accomplish that pull?

18 A. I believe we provided --

19 THE COURT: I'm sorry. Just to make the record
20 clear for the purpose of our eventual briefing, we are
21 talking about the May 2nd pull, the pull that's indicated as
22 number two on the handwritten timeline, correct?

23 MR. MacLAUGHLIN: That's right, Your Honor, and
24 I'll try to be more Tim-Willette-conscious as I go through.

25 THE COURT: Thank you.

1 BY MR. MacLAUGHLIN:

2 Q. So let me ask it again. On March 7th of 2016, you
3 received a thumb drive Yahoo!, exclamation point, right?

4 A. Yes.

5 Q. And that was Yahoo!'s response to the warrant that had
6 been signed by Judge Rau.

7 A. Yes.

8 Q. And on May 2nd of 2016, there was a mechanical filtering
9 process undertaken to try to pull privileged e-mails out of
10 that large body of e-mails; does that sound right to you?

11 A. I was aware that that was happening. I don't know the
12 exact date that it occurred.

13 Q. Okay. And were you involved in helping the team
14 formulate the terms that went into the search that resulted
15 in that pull?

16 A. Yes. I worked with the AUSAs and other agents to
17 determine what potential words were potentially privileged
18 or could help us flag potentially privileged e-mails.

19 Q. Please give Judge Menendez an idea of how that process
20 worked.

21 A. We just discussed the attorneys that we were aware of
22 that represented Mr. Adams and provided that information to
23 the AUSA.

24 Q. So, for example, did you provide the names to the AUSA
25 of lawyers that you thought represented Mr. Adams in the SEC

1 case?

2 A. Correct.

3 Q. And did you provide to the extent you knew them the
4 names of lawyer who represented Mr. Adams in the underlying
5 civil cases?

6 A. To the extent that I knew them. I don't remember who
7 was representing him in each particular matter.

8 Q. Okay. I'm going to draw a blue line -- a blue circle,
9 that is, around the number 33,161, which is the number of
10 e-mails that were segregated on May 2nd, correct?

11 A. I don't remember the exact number, but I know that there
12 was a number of them that were segregated.

13 Q. If you trust me on the number, does that sound right?

14 A. Yes.

15 Q. Okay.

16 THE COURT: Hit pause for one moment.

17 Mr. MacLaughlin --

18 MR. WADE: Your Honor, for the record, we don't
19 have an objection to these general numbers, so to keep the
20 proceedings moving.

21 THE COURT: To the extent they may not remember
22 the precise -- all of the columns, you're not concerned
23 about it.

24 MR. WADE: We're not concerned about the specific
25 numbers that are on the board with respect to the different

1 phases of searching.

2 THE COURT: Thank you. I appreciate that
3 clarification.

4 BY MR. MacLAUGHLIN:

5 Q. Inspector Kroells, then on the 7th of June of 2016 there
6 was another cull, correct?

7 A. I don't remember specific dates, but I know that there
8 were culls of pulling privileged information.

9 Q. Okay. We're going to look this in a few minutes, but
10 you saw in this (indicating) set of -- in the 113,361, you
11 spotted some things that you were concerned were privileged,
12 right?

13 A. Yes, I did.

14 Q. Did you follow your procedure: stop, flag, segregate
15 and report?

16 A. Yes, I did.

17 Q. And when you reported that, who did you report it to?

18 A. AUSA Maria.

19 Q. And did AUSA Maria in response have our automated
20 litigation support people undertake another search?

21 A. That was what his communication was to me that he was
22 going to do.

23 Q. So if I told you that another 1,494 e-mails came out on
24 June 7th of 2016, would that roughly comport with your
25 recollection of events?

1 A. It would.

2 Q. All right. So at this point in time -- and I'm no good
3 at adding and I'm certainly no calligrapher -- but there's
4 roughly, you know, 37,000 now e-mails pulled out of the
5 database, right?

6 A. Yes.

7 Q. You didn't have any access to those, did you?

8 A. Those 37,000, no.

9 Q. And that remains true to today.

10 A. Correct.

11 Q. Okay. Here's my question. Here's why I came up to the
12 white board:

13 I'm pointing an arrow at that 37,000. If there
14 had been a taint team, if the taint team procedure had been
15 followed through on by the prosecution team, what would the
16 taint team have looked at?

17 A. I believe they would have looked at --

18 MR. WADE: Objection, Your Honor.

19 THE COURT: Basis, please?

20 MR. WADE: I don't see the basis. I don't think
21 we've established that the witness can answer that question.

22 THE COURT: Lay some foundation as to her
23 knowledge about what her understanding of the plan for the
24 taint team would have been.

25 MR. MacLAUGHLIN: Sure.

1 BY MR. MacLAUGHLIN:

2 Q. So at this point in time after -- at the June 7, 2016,
3 after that second pull, if you accept my math, you guys had
4 access to 111,867 documents, right?

5 A. Right.

6 Q. The prosecution team could go onto Relativity and
7 conduct Boolean searches to see what was in there.

8 A. Correct.

9 Q. Okay. Was a taint team supposed to be involved in that
10 process?

11 A. We had talked about putting together a taint team.

12 Q. If the taint team -- so there's this 37,000 e-mails out
13 here, right --

14 A. Right.

15 Q. -- that you guys don't have access to.

16 A. Right.

17 Q. If there had been a taint team, what would they have
18 been assigned to look at?

19 MR. WADE: Objection. Lacks foundation.

20 THE COURT: For awareness of what -- let me just
21 ask you this: How did you come to learn about the plans
22 for the taint team?

23 THE WITNESS: I believe there was some
24 communication between agents and AUSAs that we had talked
25 about maybe putting together a taint team, and there was

1 outreach from the AUSAs to the agents trying to find
2 potential other agents who weren't involved in the case that
3 could be on the taint team.

4 THE COURT: Were you aware of what the plan was
5 for how the taint team would work with the prosecution team
6 or work with the evidence?

7 THE WITNESS: In general I'm aware of how it
8 works.

9 THE COURT: Okay. You can proceed,
10 Mr. MacLaughlin.

11 MR. MacLAUGHLIN: Okay.

12 BY MR. MacLAUGHLIN:

13 Q. Let me do this. I think this might help solidify this.

14 I am going to show you what's been labeled -- I
15 wasn't planning to show you this, but this is actually
16 Khan 1.

17 Before I ask any questions about this, who is Curt
18 Bohlke?

19 A. I don't know if I know that name, Curt Bohlke.

20 Q. An FBI agent who was going to be the taint agent on the
21 team?

22 A. Oh, okay. Yeah, I know there was an FBI agent that was
23 potentially going to be a taint team member, but I don't
24 remember the name.

25 Q. Okay. So you're working this case with Jen Khan of the

1 FBI?

2 A. I am.

3 Q. And for a period of time with Brandon Belich of the IRS.

4 A. Correct.

5 Q. And Curt Bohlke is, am I correct about this, a colleague
6 of Special Agent Khan's?

7 A. I don't know. I know that there was an FBI agent that
8 was going to be on the team. I don't remember his name.
9 I'm sorry.

10 Q. Okay. So there was for awhile talk of a taint team
11 looking at some stuff, right?

12 A. Right.

13 Q. And what does a taint team do?

14 A. My understanding of a taint team in general is that it
15 is generally comprised of both AUSAs and agents, sometimes
16 one or the other, and they look through the potentially
17 privileged documents that have been flagged and pulled from
18 the actual prosecutorial team, the agents and prosecutors on
19 the actual case.

20 Q. Okay. So getting back now to the white board, this
21 113,361, you guys had access to that, right?

22 A. Yes.

23 Q. To the extent that you found stuff in there that you
24 thought was privileged, what did you do?

25 A. If I thought it was privileged, I made note of it and

1 talked to the AUSA and probably the other agents about it.

2 Q. And in that event it would be shifted over to this
3 folder containing the 37,000.

4 A. Correct.

5 Q. So with all of that in mind, was a taint team ever
6 brought on board to look at these 37,000 documents?

7 A. Not that I'm aware of.

8 Q. Why?

9 MR. WADE: Objection.

10 THE COURT: Foundation?

11 MR. WADE: Foundation.

12 THE COURT: Sustained.

13 Q. Okay. Did you guys as a prosecution team talk about
14 whether it was worth the time to take a dive into these
15 37,000 documents to see if in fact they were privileged?

16 A. I don't remember if we actually talked about it. I know
17 I had an opinion as to whether we needed to look at --

18 Q. What was your opinion?

19 A. My opinion was that we didn't need to. We were finding
20 other e-mails that were specifically relevant to the search
21 warrant and to the fraud scheme and we didn't need to waste
22 other people's time to look at all of those other e-mails.

23 Q. Okay. So to your knowledge, was any effort ever made by
24 any member of the prosecution team to get into that database
25 containing the 37,000 documents and try to figure out if any

1 of them were not privileged?

2 A. Not that I'm aware of. I know we --

3 Q. These 37,000 were thrown back into the pond, correct?

4 A. Not a pond that we were looking at, but --

5 Q. Right. They were permanently locked away at the LTSC,
6 correct?

7 A. Locked away somewhere, yes.

8 Q. And somehow or other the Government came to the
9 conclusion that we're content to have those and we don't
10 need to dive into (indicating) these.

11 A. That's correct.

12 Q. I'm pointing at 113,361 and the 37,000.

13 Now, let's talk about part one of Attachment B to
14 the warrant for a second.

15 In your experience when you have a search warrant
16 and it's asking for things from an e-mail provider that
17 relate to a particular case, a particular fraud scheme, a
18 particular defendant, a particular time frame, is it the
19 responsibility of that e-mail provider to figure out what
20 fits into that description?

21 A. No.

22 Q. Have you ever called Yahoo! or Hotmail to say, "Here's
23 what we need. We need e-mails from 2009 to 2012 relating to
24 Mr. Adams, these entities, these time frames"?

25 A. No, that's not their responsibility.

1 Q. Okay. In your experience, whose responsibility is it to
2 get from that 146,522 to some lesser number that's within
3 the scope of the warrant?

4 A. The Government's team, the agents and the AUSAs.

5 Q. In your own words, if you could, tell us what your goal
6 was in searching this database between May 2nd of 2016 when
7 you really were granted access to it and April of 2017 when
8 the final relevance cull was done.

9 A. My goal was to specifically find e-mails that were
10 relevant to the fraud scheme pursuant to the search warrant.

11 Q. In the process of doing that, did you have in the back
12 of your mind attachment two to part B -- part two to
13 Attachment B of the warrant?

14 A. Yes.

15 Q. Can you see that?

16 A. I can.

17 Q. I don't think we need to get into too much detail here,
18 but this is part two of Attachment B to the warrant,
19 correct?

20 A. Yes.

21 Q. And it gets into detail, but the first paragraph says
22 that you are entitled to seize all information described
23 above Section 1 that constitutes fruits, contraband,
24 evidence and instrumentalities of violations of Title 18,
25 United States Code, Sections 1341 and 1343, involving

1 Edward S. Adams and Michael R. Monahan occurring after
2 October 25 of 2016, correct?

3 A. October 25th of 2006, yes.

4 Q. 2006. I'm sorry. So my overarching question is:

5 Is whatever you did within this database between
6 May 2nd of 2016 and April of 2017 calculated to find things
7 that fit into that general category?

8 A. Yes.

9 Q. So could you have done it manually? That is to say, if
10 you had chosen to, in your experience, because you have
11 decided personally to go through every single e-mail, that
12 wasn't privileged anyway, to see what was relevant and what
13 wasn't?

14 A. I guess. That's not my general practice because there's
15 usually so many to go through.

16 Q. Okay. So here there's 140,000-plus, right?

17 A. Yes.

18 Q. What did you decide to do in order to try to make this
19 journey from part one to part two of Attachment B?

20 A. Tried to use search terms that would be relevant to
21 finding actual evidence of the fraud scheme.

22 Q. Now, you tend to work on, at least now in your career,
23 on pretty complex cases, right?

24 A. Yes.

25 Q. When you first get, you know, in this case the

1 146,000 e-mails from Yahoo!, do you know right away what
2 search terms to use to pull out relevant stuff?

3 A. No, I don't. At that time I'm still learning about the
4 case and what's relevant and what's not.

5 Q. Okay. There's a learning curve, correct?

6 A. Yes, there is.

7 Q. And how does looking inside the database that you get
8 here from Yahoo! in this case inform you about how to go
9 forward to narrow down that warrant to just what's relevant?

10 A. Well, we don't know what we're going to get. We don't
11 know if everything is going to be relevant or if there's
12 going to be nothing relevant, so looking through it helps me
13 learn who are the players involved and what is relevant and
14 what's not.

15 Q. And in this case you're working with Jen Khan of the
16 FBI?

17 A. Yes, I am.

18 Q. You're working with IRS, Brandon Belich, later Marcus
19 Wayne?

20 A. Yes.

21 Q. You're working with AUSA Maria?

22 A. Yes.

23 Q. You're working with AUSA Kokkinen.

24 A. Yes.

25 Q. For a time you were working with AUSA Kim Svendsen,

1 right?

2 A. Yes.

3 Q. Okay. Is it fair to say that there -- in a complex like
4 this there's an arc of learning that takes a significant
5 period of time?

6 A. Definitely.

7 Q. Now, I want to ask you some questions -- again, these
8 are in your experience. In your experience, do judges tell
9 you how you're going to do this, what steps you're going to
10 take or what search terms you're going to use to get from
11 part one to part two of this warrant?

12 A. No, not in my experience.

13 Q. Did Judge Rau in this case tell you, "Here's what I want
14 you to do. I want you to use these search terms and here's
15 how much time I want you to take," anything like that?

16 A. No.

17 Q. So what's the goal? When we get down to this last
18 number here, this 42,927 document number that's at the end
19 of the road, tell Judge Menendez what your goal is with
20 respect to the nature of those 42,927 e-mails.

21 A. Well, we're hoping that those are narrowed down and
22 specifically relevant to the fraud scheme that we're
23 investigating. We're hoping to narrow everything down to
24 specifically relevant documents that are involved in the
25 fraud scheme.

1 Q. Now, I've got a question for you. In a case like this
2 involving, you know, six figures' worth of e-mails, has that
3 process ever been perfect?

4 A. Probably not.

5 Q. I mean, from time to time you run into documents that
6 are not relevant, correct?

7 A. Oh, for sure. Yeah, that happens.

8 Q. And do you have any interest in those?

9 A. No, I don't.

10 Q. I mean, for example, I guess we have apparently in that
11 database e-mails about a surprise birthday party for the
12 defendant's wife. I mean, do you have any interest in that?

13 A. No. There are so many e-mails and I'm really trying to
14 get through everything fairly quickly and I'm only
15 interested in the e-mails that are specifically related to
16 the fraud scheme. I'm not wanting to really waste my time
17 on reading anything else.

18 Q. Okay. I want to talk to you a little bit about your
19 workload now. I think we've established that you got access
20 to this database about May 2nd of 2016 and the seizure
21 occurred -- well, Mr. Wade thinks it occurred on April 4th.
22 I put April 7th, of 2017. I'm not sure what's right, but
23 about a year, correct --

24 A. Okay.

25 Q. -- that you had access to this?

1 A. Yes.

2 Q. Did you have other demands during that period of time,
3 or was this the only case you were working on?

4 A. No, I definitely had other cases that I was working on.

5 Q. For example, what did you do during October of 2016, the
6 entire month?

7 A. The entire month I was -- it was spent on a completely
8 separate trial, and the summer prior to that was spent on
9 getting ready for that mostly.

10 Q. Okay. So you worked with me, not to inject myself into
11 this, the entire summer to get ready for Reichel trial,
12 right?

13 A. Yes.

14 Q. And we were in Judge Wright's courtroom the entire month
15 of October, right?

16 A. Yes, we were.

17 Q. And are those the only two matters you have going on?

18 A. No, there are others as well.

19 Q. Okay. Other things nipping at your heels?

20 A. Yes, definitely.

21 Q. And similarly -- I can ask Jen Khan this and I will ask
22 her, but she's busy too, right?

23 A. Yes.

24 Q. Let's talk about this case then. When did you get
25 involved in investigating this case?

1 A. I believe it was towards the end of 2014.

2 Q. All right. And I think it's worth a few minutes -- I
3 know the Court has read the indictment. I know that because
4 she knows that the superseding indictment isn't real
5 different from the original one.

6 But for purposes of our discussion, can you give
7 us a two-minute executive summary of what this case is
8 about?

9 A. Sure. So my understanding is that Mr. Adams'
10 father-in-law, Robert Linares, invented a way to create
11 man-made diamonds and that Mr. Adams was involved in getting
12 investors to put money into the companies, the Apollo
13 companies, that created and marketed these diamonds. And
14 our investigation was into Mr. Adams' taking of the money
15 from the investors that was supposed to be used for the
16 companies and then transitioning that into the Scio
17 companies, continuing to position himself into a better
18 position.

19 Q. Okay. So we have a series of companies, really. We
20 have Apollo Diamond?

21 A. Yes.

22 Q. And Apollo Diamond and its intellectuals, or its
23 principals, had developed something called chemical vapor
24 deposition, which is a way of making diamonds.

25 A. Yes.

1 Q. Sounds kind of cool, right?

2 A. Yes.

3 Q. And then there's another company called Apollo Diamond
4 Gemstone?

5 A. Yes.

6 Q. And ultimately all of the assets of those two companies
7 were sold to a company called Private Scio?

8 A. That was the intent initially was to sell it to Private
9 Scio, yes.

10 Q. And then somehow that became a public company.

11 A. Then there was a separate company that became public,
12 Scio, yes.

13 Q. And so the thrust of the indictment is -- if it's true.
14 I'm not saying it's true, but the allegation is that
15 Mr. Adams, Prof. Adams, raised money and then didn't put the
16 money into these companies.

17 A. Correct, took most of the money for himself, others, or
18 his law firm.

19 Q. So Apollo Diamond, Apollo Gemstone, and Private Scio,
20 these are all essentially victims of this crime, right?

21 A. Yes.

22 Q. And Mr. Adams had various positions at that these
23 companies?

24 A. He did.

25 Q. Some of them were legal and some of them were not legal.

1 A. Yes.

2 Q. And his law firm Adams Monahan, LLC represented these
3 companies from time to time, correct?

4 A. His law firm represented them, correct.

5 Q. So you knew that he was a lawyer.

6 A. Yes.

7 Q. You knew that these companies existed and that they were
8 victims of the case.

9 A. Yes.

10 Q. You knew that he or his law firm represented the
11 companies.

12 A. Yes.

13 Q. And you also knew about the SEC case and the underlying
14 civil suits, right?

15 A. Yes.

16 Q. Did you figure as well that since he was a lawyer and
17 had a law firm that he had other clients out there
18 somewhere?

19 A. Yes.

20 Q. All right. I want to focus your attention on late 2015.

21 A. Okay.

22 Q. You're firmly ensconced as a member of the prosecution
23 team at that point in time, correct?

24 A. Yes.

25 Q. And around that time, November-December of 2015, you

1 guys began to think about getting search warrants of a
2 couple of e-mail accounts that you knew that Mr. Adams
3 controlled, true?

4 A. Yes.

5 Q. What were those two accounts?

6 A. The two accounts that belonged to Mr. Adams were
7 edwardsadams@yahoo.com, and josten1@yahoo.com.

8 Q. And what kind of e-mail accounts were they, in the sense
9 of where they private, or were they associated with
10 University of Minnesota, or Adams Monahan, or anything else?

11 A. No, they appeared to be personal accounts.

12 Q. Okay. Was the prosecution team aware that Mr. Adams had
13 an e-mail account associated with his law firm Adams
14 Monahan, LLC?

15 A. Yes, we were aware of that.

16 Q. And why didn't you get a search warrant for that account
17 as well?

18 A. My understanding, we didn't want to look into all of the
19 potentially privileged communications that would have been
20 in that e-mail.

21 MR. WADE: Objection. There's no foundation for
22 that answer.

23 THE WITNESS: I agree. The answer is stricken
24 unless you'd like to lay some foundation.

25 MR. MacLAUGHLIN: Sure.

1 BY MR. MacLAUGHLIN:

2 Q. So you were a member of the prosecution team, right?

3 A. I was.

4 Q. And in fact you turned out to be the affiant on the
5 search warrant for the personal e-mail accounts.

6 A. Yes.

7 Q. All right. Was there discussion among the prosecution
8 team about the need or the helpfulness of getting search
9 warrants to grab those two accounts?

10 THE COURT: Hold on, please.

11 MR. WADE: Just to be clear, discussion that she
12 was involved in, I would not object to that question, but
13 otherwise I object for lack of foundation.

14 THE COURT: I think that's probably inaccurate.
15 The admonition is, is she involved in the discussion.

16 MR. MacLAUGHLIN: Sure.

17 BY MR. MacLAUGHLIN:

18 Q. So Inspector Kroells, you've heard the objection and
19 you've heard the judge's view, so let's talk about what you
20 actually participated in personally or saw in e-mails maybe.

21 And let me get into it like this. How was it
22 decided, if you remember, that you were going to be the
23 affiant?

24 A. I don't remember specifically, but I know I was the one
25 who had the time at that time to put the effort into writing

1 it.

2 Q. In your discussions with the prosecution team about
3 getting warrants for these two e-mails, did you guys talk
4 about or acknowledge the existence of an e-mail account that
5 he had at his law firm?

6 A. Yes, we did.

7 Q. And did you talk about whether you were going to go and
8 get an e-mail for that account?

9 A. Yes, we talked about that.

10 Q. Tell us about those discussions that you participated
11 in.

12 A. We just talked about that we knew that there was these
13 other e-mail addresses out there and that we didn't want to
14 delve into that at this point because there was so much
15 potentially privileged communications in those e-mail
16 addresses that we thought we'd better be a little safer and
17 stay with the personal e-mail accounts.

18 Q. Okay. In having those discussions, you were aware that
19 Adams Monahan had acted from time to time as a lawyer,
20 represented the Apollo and Scio entities, right?

21 A. Yes.

22 Q. So I take it it wasn't that you stayed away from that
23 account because you thought it didn't have anything relevant
24 in it.

25 A. Correct.

1 Q. Okay. So let's talk a little bit now about your work as
2 the affiant in this case.

3 You testified earlier that generally you worked
4 with the United States Attorney's Office in putting together
5 an affidavit, correct?

6 A. Yes.

7 Q. And so in late 2015, who did you work with at our office
8 to draft, review and finalize the search warrant affidavit?

9 A. Initially I was going to be working with Kim Svendsen
10 from the U.S. Attorney's Office, but that changed to AUSA
11 Kokkinen and I worked mostly with him to draft and write the
12 affidavit.

13 Q. Okay. So Mr. Kokkinen reviewed your work?

14 A. Yes, he did.

15 Q. Mr. Kokkinen, did he provide you with ancillary or
16 additional documents he thought was necessary to bring to
17 the judge in getting the warrants?

18 A. I don't remember that.

19 Q. So you wrote in your declaration -- and I'm going to
20 quote this and then ask you about this. In your declaration
21 you say in working on putting this affidavit together, you
22 understood that Mr. Kokkinen "had engaged in a process
23 related to attorney-involved searches before I went to the
24 magistrate judge to seek signing of the warrants."

25 Do you know anything about that process?

1 A. I know that he did that process. I don't know what was
2 all involved in that process, no.

3 Q. I now want to take you to November the 25th of 2015.
4 You actually swore this affidavit out twice, correct?

5 A. I did.

6 Q. And the first time you did that was on November
7 the 25th, 2015 before the now-retired Magistrate Judge
8 Mayeron, correct?

9 A. Yes.

10 Q. And that particular warrant ended up having attached to
11 it a document called "Search Warrant Addendum," correct?

12 A. Yes.

13 Q. My first question is: Were you even aware that it was
14 there at the time?

15 A. At the time I received an e-mail from AUSA Kokkinen and
16 it did not have that addendum attached to the documents that
17 were going to be presented to the judge.

18 Q. Okay. Let's -- I'm asking you a slightly different
19 question.

20 A. Okay.

21 Q. I'll ask you that one next.

22 A. Okay.

23 Q. Did you have an awareness -- when you walked out of
24 Judge Mayeron's office and she'd signed it, did you have an
25 awareness that that document was even attached to the

1 materials relating to the warrant?

2 A. I don't remember specifically, but I think -- I think
3 this was the circumstance where she added that prior to me
4 walking out of her office. I know there was a time when
5 that happened and I think it was this warrant.

6 Q. All right. So is your answer you don't remember if you
7 were aware of it as you walked out of her office, or you
8 just don't recall, or --

9 MR. WADE: Objection. Asked and answered.

10 THE COURT: Let's clarify the answer.

11 A. So I don't remember specifically, but I think that this
12 was the instance where the judge added that document to the
13 warrant. I know that there was a time when that happened
14 and I think that was this warrant.

15 Q. Now, since you swore out your declaration, I asked you
16 to go back and look at your e-mails to try to figure out if
17 our office had provided you with that document, correct?

18 A. Right.

19 Q. And in doing what I asked you to do, you went back and
20 looked at e-mails that you received from Mr. Kokkinen just
21 ahead of your signing this warrant.

22 A. I did.

23 Q. What did you find?

24 A. I found the sealing order and related documents and then
25 the affidavit and related documents, but I did not find that

1 search warrant addendum.

2 Q. All right. So based on your search, do you think AUSA
3 Kokkinen or the U.S. Attorney's Office in any way provided
4 you with that search warrant addendum?

5 A. I think they did not.

6 Q. Okay. So now I want to talk to you a little bit about
7 what we talked about earlier, the difference between a
8 premises warrant and an e-mail warrant. And if I'm
9 recalling correctly, you said when you grab a computer out
10 of somebody's house, you dispossess them of it, when you do
11 an e-mail search warrant you don't, correct?

12 A. Correct.

13 Q. So I'm going to show you Kroells 1. If you could take a
14 look at Kroells 1 for a second.

15 A. I have --

16 Q. Did I not properly collate your pile?

17 A. There's Belich 1 in front of mine, but --

18 Q. You'll find Kroells 1 a few pages in.

19 A. I have it, yes.

20 Q. And you and I met last week to get ready for this
21 hearing?

22 A. We did.

23 Q. And I showed you a document which is actually our
24 standard search warrant addendum that we attach to premises
25 warrants where we think we're going to get a computer.

1 A. Yes.

2 Q. Do you remember that?

3 A. I do.

4 Q. So I want to focus in -- let's start with paragraph 2.

5 Paragraph 2 says:

6 "If electronically stored data, information,
7 documents, or other records have been identified and seized
8 by the Government, the Government may retain the electronic
9 storage device.

10 First question: When you go get e-mails from an
11 e-mail provider, do they actually take their storage device
12 and detach it from their system and send it to you?

13 A. No, my understanding is that we get copies of what is in
14 that account.

15 Q. Is there anything to return to the e-mail provider when
16 you get an e-mail search warrant take?

17 A. No.

18 Q. Okay. Let's go on. It next says:

19 "The person from whom the electronic storage
20 device was seized may request that the Government provide
21 him or her with electronic copies of the data, information,
22 documents, or other records by making a written request to
23 the United States Attorney's Office, identifying with
24 specificity the data, information, documents, or other
25 records sought to be copied."

1 Here's my question: In your experience, does that
2 concept have any application at all to an e-mail search
3 warrant?

4 A. No, it doesn't.

5 Q. Is there anything after you execute an e-mail search
6 warrant to be returned to the person whose account was
7 searched?

8 A. No, and in fact, a lot of times that person doesn't even
9 know that that account has been searched.

10 Q. I want to go down now to paragraph 3. Inspector
11 Kroells, can you read that on there? Can you read the
12 document?

13 A. Yes.

14 MR. MacLAUGHLIN: Judge, can you read it?

15 THE COURT: Yes.

16 Q. Okay. I've circled something in paragraph 3. It says:

17 "Nothing in this warrant shall limit or prevent
18 the owner of the electronic storage device, files, software,
19 hardware, data, information, documents, or other records
20 from filing a motion with the Court pursuant to Rule 41(g)
21 for the return of the property or making a request directly
22 to the Government for the return of the property."

23 Does that concept have any application whatsoever
24 in the context of an e-mail search warrant?

25 A. No, it does not.

1 MR. WADE: Objection. Lacks foundation.

2 THE COURT: I agree. I don't think her opinion as
3 to the applicability of either of these paragraphs to
4 electronically provided data is particularly relevant.

5 MR. MacLAUGHLIN: Okay.

6 BY MR. MacLAUGHLIN:

7 Q. Well, let me ask you this, then. Looking at the top,
8 there's a paragraph there that says:

9 "In conducting the search authorized by this
10 warrant, the Government shall make reasonable efforts to
11 utilize search methodology that avoids searching files,
12 documents, or other electronically stored information which
13 is not identified in the warrant."

14 Was that done in this case?

15 A. Yes, to my knowledge.

16 Q. And in paragraph 4 it says:

17 "In the event the data seized" -- "In the event
18 that data seized pursuant to this warrant is identified by
19 the Government as possibly containing attorney-client
20 privileged communications, a process will be undertaken" --
21 here it talks about a taint team -- "to screen off the
22 prosecution team from those materials."

23 Did that happen in this case?

24 A. We were screened off from those materials and discussed
25 putting together a taint team, yes.

1 Q. Okay. And in this case you guys never (indicating)
2 tried to delve into those 37,000 documents.

3 A. No.

4 Q. Moving on now to Kroells 2, is this the search warrant
5 addendum that was attached to the first version of the
6 warrant that you executed in front of Judge Mayeron?

7 A. It looks like it, yes.

8 Q. And is it essentially the same thing that we just looked
9 at which is standard operating procedure in a premises
10 warrant?

11 A. Yes.

12 Q. Okay. And Mr. Kokkinen did not send this to you.

13 A. No.

14 Q. So Inspector Kroells, this first warrant that you swore
15 out in front of Magistrate Mayeron, to make a long story
16 short, you sent it to Yahoo!. Somehow the service was no
17 good because their rules had changed, and so you had to go
18 get a second warrant; is that all fair?

19 A. That is correct.

20 Q. You swore out this same warrant, essentially, in front
21 of Judge Rau on January the 7th of 2016?

22 A. Correct.

23 Q. When you went to see Judge Rau, did you in some way
24 deliberately withhold or conceal from him this addendum?

25 A. Definitely no, I did not.

1 Q. In your mind, when you went and saw Judge Rau on
2 January 7th, were you essentially re-presenting the same
3 thing to him that you had previously presented to Magistrate
4 Mayeron?

5 A. Essentially, yes.

6 Q. On January 8th, the next day, did you serve it on
7 Yahoo!?

8 A. I did.

9 Q. All right. Let's go forward to March 7th of 2016. On
10 that day you did receive a flash drive from Yahoo!, correct?

11 A. Yes, I did.

12 Q. And that was the flash drive that contained documents
13 that were responsive to this warrant.

14 A. Yes.

15 Q. Specifically, the documents within the ambit of part one
16 of Attachment B.

17 A. Yes.

18 Q. Tell us what you did initially with that thumb drive.

19 A. I logged it into evidence and attempted to access it.

20 Q. And was your initial attempt to access it successful?

21 A. I don't remember. I know that I had with problems with
22 one time using the Mozilla application and trying to get it
23 loaded onto our standalone computer so that I could access
24 the e-mails in the flash drive. I don't know remember if it
25 was this specific flash drive or not.

1 Q. So you did sort of an initial access of it right away?

2 A. At some point, yes, when I was able to get into it.

3 Q. What was the purpose of that initial access? The first
4 time you opened it, what was the reason you opened it?

5 A. To determine the volume of what I had received and that
6 what I had received was what was being asked for.

7 Q. And what did you discover?

8 A. That we received e-mails pursuant to the three e-mail
9 addresses and that there were quite a few e-mails in all
10 three of those accounts.

11 Q. I want to direct your attention now to the week or so
12 after you got that drive, the week or so after March 7th of
13 2016.

14 A. Okay.

15 Q. Did you access the drive again?

16 A. Yes.

17 Q. And prior to receiving the drive, had you communicated
18 with the prosecution team about the possibility of accessing
19 it when you got it?

20 A. Yes.

21 Q. And why did you talk to the prosecution team about
22 looking inside the thumb drive when you got it?

23 A. Just being cautious, making sure that we were able to
24 look at what we received.

25 Q. Okay. What specifically did you search? What were you

1 looking for when you accessed the thumb drive in the week or
2 so after you got it?

3 A. I was looking for evidence related to the fraud scheme
4 and getting ready for any potential interviews that we were
5 going to be conducting.

6 Q. Did you talk to AUSA Maria about going in and looking at
7 the thumb drive?

8 A. I did.

9 Q. Tell us about what conversation.

10 A. So I know that we spoke in general about looking at the
11 thumb drive and whether I would be able to look at the
12 e-mails. And then also, I specifically remember talking to
13 him about being able to read e-mails between Mr. Adams,
14 Mr. Monahan, and employees of the Apollo and Scio companies.

15 Q. Okay. So I want to ask you a couple of general
16 questions about that and then some specific questions about
17 that, okay?

18 A. Okay.

19 Q. In going into the thumb drive in the week or so after
20 you got it, did you employ your vigilance in avoiding
21 attorney-client privilege documents?

22 A. Yes, I did.

23 Q. Did you particular employ that diligence in avoiding
24 looking at or exposing yourself to Mr. Adams' communications
25 with lawyers who represented him in the SEC matter?

1 A. Correct. We were -- or I was specifically concerned
2 about avoiding any of the e-mails that could be potentially
3 privileged between Mr. Adams and any attorneys that
4 represented him.

5 Q. Including in the SEC matter?

6 A. Including in the SEC matter.

7 Q. And the related civil matters.

8 A. Correct.

9 Q. If it's not exactly the same as your answer was before,
10 tell the judge what you did in accessing that flash drive to
11 avoid looking at those documents.

12 A. I don't remember specifically within that week or so
13 that I had the flash drive before turning it over to
14 SA Khan, but I know that I would have followed my common
15 procedure, which is being careful not to review any
16 potentially privileged documents, and if I did actually see
17 something, I would write down the name of the attorney
18 involved and let the AUSA know, for example, I'm seeing a
19 lot of potentially privileged information or I'm seeing a
20 little bit of potentially privileged information so that the
21 AUSA would have that information and be able to let me know
22 how to proceed from there.

23 Q. In your first foray into the thumb drive that week when
24 you had it, did you see any privileged stuff?

25 A. I don't remember specifically. It's likely that I did.

1 Q. Okay. And if you did?

2 A. I would have used those methods. I would have not
3 reviewed it and then relayed the information to the AUSA of
4 what I was finding and the names of the attorneys.

5 Q. Do you remember in fact doing that? Did you give AUSA
6 Maria -- you know, "I'm running into some stuff and here are
7 the names of the lawyers"?

8 A. I know I did throughout this process. It was such a
9 short period of time prior to turning the drive over to
10 SA Khan. I don't remember if that happened before. It was
11 likely that it did, but I don't remember --

12 Q. It was likely that what?

13 A. That I did.

14 Q. That you did. And in fact, a very short time later AUSA
15 Maria decided to undertake a heightened filter procedure for
16 that very thumb drive, correct?

17 A. It was my understanding, yes, that that was going to
18 happen.

19 Q. Let me ask you a specific question and you averted to it
20 a few minutes ago.

21 In your declaration you say that you had
22 communications -- that you talked to David Maria about
23 whether you could look at communications between Mr. Adams
24 and employees of Apollo/Scio entities. Do you remember
25 that?

1 A. Yes.

2 Q. Tell us about that conversation with Mr. Maria.

3 A. I think I was just being cautious and making sure that
4 we could look at those e-mails. Our main concern,
5 obviously, was protecting the attorney-client privilege
6 between Mr. Adams and attorneys that represented him, but I
7 was also aware that Mr. Adams himself was an attorney and I
8 wanted to make sure that we could look at communications
9 between him and the companies' employees.

10 Q. Okay. Now, these companies were mainly in the persons
11 of people with the last name of Linares, correct?

12 A. Correct.

13 Q. There's Robert Linares and Bryant Linares?

14 A. Yes.

15 Q. And they were the people who were actually working at
16 the Apollo entities.

17 A. Yes.

18 Q. And so you wanted to know to the extent Mr. Adams is
19 communicating with these guys, can I look at it?

20 A. Correct.

21 Q. Characterize them. What were they?

22 A. They were victims in the case.

23 Q. They were victims. And what did Mr. Maria tell you
24 about whether you could look at Mr. Adams' communications
25 with the victims in this case?

1 A. He said that yes, I can, and that --

2 THE COURT: Pause, please.

3 You can politely say, "Objection" and stop things.
4 You're so quiet.

5 MR. WADE: I object to this line of questioning
6 and the characterization of victims. This is early in the
7 investigation.

8 THE COURT: Overruled.

9 MR. WADE: And I don't see the relevance to
10 whether or not they were victims to the privilege analysis.

11 THE COURT: Overruled. Obviously your belief that
12 these people are or aren't victims doesn't control whether
13 they were victims. That's our long-term question in this
14 case.

15 You can proceed, Mr. MacLaughlin.

16 MR. MacLAUGHLIN: Okay. Thank you.

17 BY MR. MacLAUGHLIN:

18 Q. And what did Mr. Maria say when you said, "Can I talk to
19 the Linareses? Can I look at Mr. Adams' communications with
20 the Linareses?" What did he say?

21 A. He said that I could and that in any case we would be
22 receiving I think it was a privilege waiver from the
23 company, but it didn't really matter. We could look at them
24 anyway.

25 Q. Okay. And do you know whether that waiver ultimately

1 occurred?

2 A. It did.

3 Q. Okay.

4 MR. MacLAUGHLIN: And, Your Honor, I would refer
5 the Court to General Exhibit 1, which is the actual waiver,
6 I think, of the privilege by these entities.

7 THE COURT: Thank you.

8 Q. So during the course of your review during that one
9 week, did you see e-mails that struck you as relevant to the
10 case and interesting enough to print out for future use?

11 A. I did.

12 Q. And did you print out some e-mails?

13 A. I did.

14 Q. How many e-mails did you print out?

15 A. About 22 e-mails.

16 Q. And do you have those e-mails today?

17 A. No, I do not.

18 Q. Are those e-mails now in the possession of the defense?

19 A. I don't know. My understanding is that I turned them
20 over to AUSA Ann Bildtsen.

21 Q. And Ann Bildtsen is now the leader of the recently
22 constituted taint team.

23 A. Correct.

24 Q. I just want to put a final nail in this. In that
25 one-week period when --

1 THE COURT: Can I clarify, Mr. MacLaughlin, one
2 question?

3 You said that you printed out 22 e-mails during
4 this week before you turned over the thumb drive?

5 THE WITNESS: (Nods head).

6 THE COURT: And the paper copies of those e-mails
7 exist to this day?

8 THE WITNESS: Yes. Those -- sorry.

9 THE COURT: No, go ahead.

10 THE WITNESS: Those paper copies is what I turned
11 over to AUSA Bildtsen.

12 THE COURT: Got it. Thank you.

13 Sorry for the interruption.

14 MR. MacLAUGHLIN: No, no problem.

15 BY MR. MacLAUGHLIN:

16 Q. So just to put a final nail in this, during the entire
17 week or whatever it was when you were looking at the thumb
18 drive, did you have your procedure in play of stop, flag,
19 segregate, and alert AUSA Maria if you saw anything that
20 looked privileged to you?

21 A. Yes. That's my common procedure.

22 Q. Okay. I want to go forward a little bit now.

23 There's some confusion in the documentation about
24 whether you gave that thumb drive to Special Agent Khan, but
25 you did give it to Special Agent Khan at some point, right?

1 A. I did.

2 Q. There's some indications it was on March 17th, other
3 documents suggest it was March 14th, but in that couple-day
4 range you gave it to her, right?

5 A. I did, mm-hm.

6 Q. And you understood, correct, that Special Agent Khan
7 turned it over to AUSA Maria?

8 A. Yes.

9 Q. Now, when AUSA Maria got the thumb drive, did you start
10 to hear from AUSA Maria that his view was that we had to
11 engage in a heightened filter process with respect to that
12 thumb drive?

13 A. Yes. My understanding was that was the reason why
14 Special Agent Khan turned that flash drive over to AUSA
15 Maria.

16 Q. And what kind of a filtering process did you
17 understand -- from AUSA Maria's conversations with you, what
18 kind of a filtering process did you understand you were
19 contemplating?

20 A. That we were trying to filter out the potentially
21 privileged information.

22 Q. I guess I'm asking how. By hand, mechanically? How was
23 that going to happen?

24 A. I didn't really completely understand the process, but
25 some type of electronic digital process that the U.S.

1 Attorney's Office would employ.

2 Q. And I think you testified earlier that in fact as a
3 member of the prosecution team, you were involved in helping
4 the prosecution team come up with a list of terms designed
5 to cull out privileged stuff, right?

6 A. Yes.

7 Q. And was your contribution to that process in part
8 informed by what you had seen in the week you were looking
9 at the thumb drive?

10 A. I'm sure it was, yes.

11 Q. So, what is Relativity other than something I can't
12 stand? What is Relativity?

13 A. Relativity is, I guess, a database that we use to review
14 evidence. It's specifically helpful in reviewing e-mail
15 evidence.

16 Q. And in this case was Relativity the medium used to house
17 these e-mails?

18 A. Yes, it was.

19 Q. And was Relativity the electronic format in which these
20 segregated documents I've been referring to, the 37,000 up
21 there, were pulled out and stored?

22 A. So my understanding is we were able to view the ones
23 that were not pulled out, the ones that were not potentially
24 privileged. I don't know where the 37,000 were stored.

25 Q. Okay. And if I told you that it looks like you guys --

1 by "you guys" I mean the prostitution team -- got access to
2 the 113,361 on May 2nd of 2016, does that sound about right
3 to you?

4 A. I think it was a couple days later that we were informed
5 of it, but yes, around that time.

6 Q. Okay. And as this process was happening, as the
7 mechanical filtering process was occurring, while they were
8 doing their thing down at the LTSC, was David Maria
9 communicating with you guys about what was going on?

10 A. Yes, he was.

11 Q. I'd like to direct your attention to Kroells 3.

12 A. Okay.

13 Q. On April 27th of 2016, did Mr. Maria send out an e-mail
14 to Brandon Belich, yourself, and Jennifer Khan?

15 A. He did.

16 Q. And Brandon Belich was the IRS agent working on this
17 case at the time?

18 A. At the time, yes.

19 Q. And Jennifer Khan is the FBI agent, right?

20 A. Yes.

21 Q. And it's called "Scio Update." Mr. Maria says:

22 "We have run search terms on the e-mail database
23 to try to segregate potentially privileged documents."

24 Is it that what you understood was going on, that
25 the documents were getting pulled out that might be

1 privileged?

2 A. Yes.

3 Q. "We are still trying to refine the database that
4 contains potentially privileged docs, but the good news is
5 that the larger database should be available for our review
6 very soon. Does everyone have access to Relativity?"

7 Do you see that?

8 A. I do.

9 Q. So did AUSA Maria send this to you right before you guys
10 actually got access to the Relativity database he's
11 referring to here in the e-mail?

12 A. Yes, he did.

13 Q. Now, there's a chain -- page 2 of Kroells 3 contains
14 other e-mails that are a little bit later. I want to direct
15 your attention to the bottom of page 2 of Kroells 3.

16 Do you see there that there's an e-mail from
17 May 4th of 2016 from Mr. Maria to apparently the prosecution
18 team?

19 A. I do see that, yes.

20 Q. And so obviously it's dated May 4th. You appear to be
21 correct that it wasn't May 2nd, right?

22 A. Right.

23 Q. Before we even look at this, okay, I want to ask you
24 about the mindset of the prosecution team when you were
25 about to receive the Relativity e-mails, and I'm going to

1 give you an either/or.

2 A. Okay.

3 Q. Was the mindset -- and speak for yourself. I mean, if
4 you don't know what other people were thinking, that's fine.

5 But in talking among yourselves, was your mindset
6 that: Great. We're getting a bunch of stuff from the LTSC.
7 It's been screened for privilege. We have nothing to worry
8 about. We can go through them with impunity.

9 That's choice one.

10 Or choice two, was your mindset and were your
11 discussions: It's coming back, we've done our best to
12 filter them, but it may not be a perfect process, so we're
13 going to keep our eyes open and continue to be vigilant for
14 attorney-client stuff.

15 Choice one or choice two?

16 MR. WADE: Object to the form about what was your
17 mindset.

18 THE COURT: Okay. I'd also note that I'm not sure
19 how relative mindset is as subjective intent isn't part of
20 our calculus as opposed to actions.

21 MR. MacLAUGHLIN: I'm really -- may I address that
22 with the witness?

23 THE COURT: Certainly.

24 BY MR. MacLAUGHLIN:

25 Q. So I'm asking you about --

1 THE COURT: So the first objection was as to
2 leading. Let's focus in on letting her articulate her own
3 view of her mindset.

4 My additional concern is, I don't want to go too
5 far down the road of subjective intent which neither damns
6 nor saves nor saves the process that was ultimately
7 undertaken.

8 MR. MacLAUGHLIN: Okay. I understand. I'm just
9 trying to really not get the mindset so much as the
10 prosecution team was working to avoid seeing stuff it
11 shouldn't see. That seems like it goes to reasonableness,
12 but I certainly understand your ruling.

13 THE COURT: I think -- I'm sorry. To the extent I
14 have complicated what was a very reasonable leading
15 objection by adding my own overlay, my concern is actions
16 taken demonstrate reasonableness; intentions, underlying
17 actions taken are exactly why I have determined that AUSA
18 Maria can't testify.

19 MR. MacLAUGHLIN: Understood. What's good for the
20 goose is good --

21 THE COURT: Exactly.

22 MR. MacLAUGHLIN: Goose/gander. Okay.

23 THE COURT: Continue, please.

24 MR. MacLAUGHLIN: All right.

25

1 BY MR. MacLAUGHLIN:

2 Q. When the stuff came back from the LTSC and you got
3 access to it on May 4th of 2016, were you still vigilant for
4 additional things that might be attorney-client privileged
5 in that take?

6 A. Yes, definitely.

7 Q. Okay. Why? How?

8 A. It was my understanding that that filtering process may
9 not have completely pulled out all of the potentially
10 privileged documents, and we needed to continue to keep our
11 regular practice in place of making sure that if we see
12 something we think might be privileged, to stop reviewing it
13 and let the AUSAs know.

14 Q. I'd like to direct your attention now to Kroells 3, page
15 2, bottom of the page. Is this an e-mail from Mr. Maria to
16 you dated May 4th?

17 A. Yes, it is.

18 Q. And he writes:

19 All: Also, the e-mail database is up and ready
20 for review in Relativity. It is the Adams II database. Per
21 our searches, the potentially privileged docs have been
22 pulled and stored in a separate database which should not
23 show up in your Relativity screens.

24 First question: Was that true? Did the
25 screened-out documents not appear on your Relativity

1 screens?

2 A. Correct, that's my understanding.

3 Q. That being said, if you identify other law firms or
4 lawyers in your review of the database with whom any of our
5 folks appear to have an attorney-client relationship, make
6 sure to flag it and we can run supplemental searches to
7 segregate these documents.

8 My question is: Did you do that? When you went
9 into the 113,361, did you employ that, that process of
10 keeping your eyes open?

11 A. Yes, I did.

12 Q. Did you in fact, Inspector Kroells, when you were going
13 through those 113,361 e-mails, find other things that you
14 thought really were privileged and shouldn't be in there?

15 A. I did.

16 Q. And did you communicate that to your AUSA?

17 A. I did.

18 Q. I'd like to direct your attention to Kroells 5.

19 On May 16th of 2016, did you send an e-mail to
20 Mr. Maria and Mr. Kokkinen outlining some of your concerns
21 about things you were seeing amongst the 113,361 e-mails?

22 A. I did.

23 Q. And I'm just going to read this.

24 In going through the e-mails, I've come across the
25 following e-mail addresses that appear to contain privileged

1 communications, @arnstein.com and @felhaber.com.

2 Do you see that?

3 A. I do.

4 Q. Why did you think that these were of concern, these
5 particular things you were noticing?

6 A. Because they must have been related to attorneys that I
7 knew were representing Mr. Adams at the time? I don't
8 remember Arnstein at this point in time, but I do remember
9 Felhaber was Jon Hopeman, who was Mr. Adams' criminal
10 attorney.

11 Q. Okay. And you sent this to David Maria, correct?

12 A. Yes.

13 Q. Flipping over to page 2, AUSA Maria responded 24 minutes
14 later, correct?

15 A. Yes.

16 Q. And he wrote:

17 I also saw that Hopeman had done some work for him
18 before, so we need to add Hopeman, as well as the @felhaber
19 that you note below?

20 Correct?

21 A. Yes.

22 Q. And he goes on to also say that he's noticed that Tom
23 Brever has done some work for Mr. Adams, right?

24 A. Yes.

25 Q. And so did this lead to another cull that among other

1 things pulled out the names of those lawyers?

2 A. Yes.

3 Q. And was that the cull reflected in line item 3 there on
4 the board where another 1,494 e-mails came out of the
5 database?

6 A. That would make sense, yes.

7 Q. All right. Now I'd like to ask you a few questions
8 about the searches that you in fact undertook, not a lot,
9 but some, in order to determine whether they were reasonable
10 in light of the search warrant, all right? So I'd like to
11 show you and have you look at Kroells 7.

12 Now, Kroells 7 is an e-mail -- essentially an
13 e-mail from you to David Maria, correct?

14 A. Yes, it is.

15 Q. And it's dated November the 3rd of 2016.

16 A. Yes.

17 Q. And on that day, you and I and Joe Thompson, we were
18 waiting for a verdict in the Reichel case, right?

19 A. Yes, we were.

20 Q. So suddenly you had a chunk of time to pay attention to
21 this.

22 A. Yes, I did.

23 Q. What were you thinking about that resulted in the
24 population of this e-mail?

25 A. Trying to organize our case and trying to get all of the

1 relevant e-mails together for the fraud scheme case.

2 Q. And to that end, Inspector Kroells, were you thinking
3 about potential flags that you could use to mark particular
4 e-mails in the Yahoo! take?

5 A. Yes.

6 Q. I'd like you to direct your attention to the second page
7 of Kroells 7.

8 So I don't want to ask you about all of these. We
9 know who Ed Adams is. Who's Mike Monahan and why did you
10 think he deserved a flag?

11 A. Mike Monahan was Mr. Adams' law partner and also worked
12 a lot on the Apollo transactions. We believed he was
13 involved in the fraud scheme.

14 Q. Okay. Who's Theo Strauss?

15 A. I believe he was a board member one of the Apollo
16 companies and then later served at least on a special
17 litigation committee for Scio, so we believed he might have
18 communications or information about the fraud scheme as
19 well.

20 Q. All right. Just bombing around a little bit, who's
21 Sandy Ward?

22 A. Sandy Ward was an assistant of Mr. Adams. I know that
23 she had some communications with Mr. Adams about some secret
24 bank accounts that were of particular interest in the fraud
25 scheme.

1 Q. How about -- what's Crossbow?

2 A. Crossbow is the original name of the public company that
3 was used to turn into Public Scio, which ended up purchasing
4 the assets of the Apollo companies.

5 Q. So these flags that you're proposing here, are they all
6 flags designed, in your mind, to organize stuff in this
7 Yahoo! database by relevance, by particular categories of
8 relevance to the investigation you were conducting?

9 A. Yes.

10 Q. I'd like to talk to you for a few minutes about some of
11 the searches you in fact undertook, and I want to direct you
12 to Kroells 8.

13 Inspector Kroells, you understand that as it turns
14 out, the searches that you did on Relativity were captured
15 by that program, right?

16 A. Yes.

17 Q. I want to ask you, did you know that your searches were
18 captured by Relativity when you were doing these searches?

19 A. No, I didn't.

20 Q. Okay. So again, I'm going to tread very lightly here.
21 I think Mr. Wade will probably have more questions than I,
22 but let's just -- Sandy and Ward. You searched for Sandy
23 and Ward, Sandy Ward, right?

24 A. Yes.

25 Q. Who's Sandy Ward?

1 A. Sandy Ward is the assistant to Mr. Adams that I spoke of
2 who had communications about the secret bank accounts.

3 Q. Okay. What secret bank account?

4 A. So in the process of the fraud scheme, my understanding
5 is Mr. Adams opened up bank accounts that money from
6 investors was put into. Some of those bank accounts were
7 not -- the Linares family was not aware of those bank
8 accounts, and a lot of the money that came out of them went
9 directly to Mr. Adams, his partner, or his law firm, other
10 people involved.

11 Q. Okay. And so that secret bank account is relevant to
12 your case, is that true?

13 A. Yes.

14 Q. And is it fair to say then that you constructed the
15 Sandy Ward search to lead you to documents that were within
16 part two of Attachment B to the warrant?

17 A. Definitely, yes.

18 Q. Now, there's some funny ones in here. Like, if we go to
19 page 2, it looks like you searched for the word "crap."

20 A. Yes, I did.

21 Q. Okay. Why did you search for the word "crap"?

22 A. In my experience when fraud schemes are going downhill,
23 things are starting to unravel, people will start getting
24 cryptic in their e-mails, but they also start using foul
25 language or getting upset, and those were the e-mails that I

1 was looking for relevant to this scheme.

2 Q. So the word "crap" you thought might lead to documents
3 within the ambit of part two of Attachment B.

4 A. Yes.

5 Q. Let's go to the bottom of page 4. They're not numbered,
6 unfortunately, but let's go there anyway. You have a
7 search: "Monahan" and "Maddox" and the "f" word.

8 A. Yes.

9 Q. Tell us about that search.

10 A. Again, my understanding when fraud schemes are going
11 downhill, people use foul language. Mr. Monahan and
12 Mr. Maddox were both attorneys at Mr. Adams' firm that were
13 working on the Apollo and Scio transactions. I thought they
14 had directly relevant information regarding the scheme.

15 Q. I'm just going to ask you this question and then I'm
16 going to let Mr. Wade cross-examine you on it.

17 Is your testimony that all of the searches that
18 are reflected here in Kroells 8 were designed to lead you to
19 relevant evidence within the ambit of part two of Attachment
20 B of the warrant?

21 A. Yes, that was what I was trying to do.

22 Q. Okay. Now, finally, I want to get into an area that
23 isn't entirely germane to why we're here, but you have been
24 attacked, correct, as having misled Judge Rau?

25 A. Yes.

1 MR. MacLAUGHLIN: Your Honor, just one moment.

2 (Pause)

3 Q. So I'm going to read something into the record to
4 prepare to ask you some questions, okay?

5 A. Okay.

6 Q. And I'm looking at ECF No. 37, and ECF No. 37 is
7 Prof. Adams' memorandum in support of defendant's motion to
8 suppress.

9 THE COURT: Okay. Hang on just one second.

10 MR. WADE: If we could just have the Court's
11 indulgence, I don't think that's marked as an exhibit. I
12 have the pleading, I can find it, but I wasn't prepared
13 to --

14 THE COURT: Yes, that would be great. I'm just
15 looking to see if I can pull it up on my iPad.

16 37?

17 MR. MacLAUGHLIN: 37, ECF 37.

18 THE COURT: I've got it. Take time to make sure
19 you've got it. What page are you referring to,
20 Mr. MacLaughlin?

21 MR. MacLAUGHLIN: I'm referring to page 32.
22 There's sort of a summary in here of the things that
23 Prof. Adams alleges that Inspector Kroells did not tell
24 Judge Rau that she should have told Judge Rau.

25 THE COURT: Okay. I don't need you to read this

1 into the record, but you can certainly flag for us what you
2 think is important here.

3 MR. MacLAUGHLIN: Sure.

4 BY MR. MacLAUGHLIN:

5 Q. You understand, Inspector Kroells, that you've been
6 accused of sort of misleading or not being fully -- of
7 lacking some candor with Judge Rau, correct?

8 A. Correct.

9 Q. There's not been a **Franks** motion and I don't think
10 there's a facial challenge to the warrant, but is among
11 other things -- so, Prof. Adams said that you did not tell
12 Judge Rau that EdAdams@yahoo.com was his main e-mail
13 account. Do you remember that accusation?

14 A. I do.

15 Q. I'd like to direct your attention to paragraph 33 of
16 Kroells 9, which is your affidavit?

17 MR. WADE: I'm sorry. Which specific reference in
18 document 37, DCD document 37? What page and what line?

19 MR. MacLAUGHLIN: So I was trying to stay away
20 from it, so --

21 THE COURT: No, no, that's okay. If it's
22 important to be specific, just tell us where the allegation
23 is that this is not -- that there was a representation that
24 this was not made?

25 MR. MacLAUGHLIN: Okay. At page 32 there's a full

1 paragraph starting with the word "Here."

2 THE COURT: Got it.

3 MR. MacLAUGHLIN: Second sentence: The inspector
4 did not inform Magistrate Judge Rau that Mr. Adams was
5 represented by counsel in a parallel SEC investigation that
6 had been underway since the preceding year, or that he had
7 been represented by counsel in related private civil suits.

8 Correct?

9 A. Yes.

10 Q. My first question is: Do you understand at all in your
11 training that you're required to tell a judge what other
12 legal proceedings are affecting a defendant whom you propose
13 to search?

14 A. No, it's not my --

15 MR. WADE: Objection. Relevance.

16 THE COURT: Overruled.

17 A. No, it's not my understanding that I need to state that.

18 Q. And in fact, you referred to the SEC investigation in
19 your affidavit, didn't you?

20 A. I did.

21 Q. I'd like to direct your attention to paragraph 14 of
22 Kroells 9, and in the first phrase of that paragraph you
23 wrote -- and this is what you presented to Judge Rau,
24 correct?

25 A. Yes, it is.

1 Q. According to the transcript of a deposition of Adams
2 conducted by the SEC on or about August 27, 2015, Mr. Adams
3 answered certain questions.

4 Do you see that?

5 A. I do see that.

6 Q. So certainly you weren't hiding from Judge Rau that
7 there was an SEC investigation that somehow led to
8 Prof. Adams being deposed, correct?

9 A. Correct.

10 Q. In any event, did you have any obligation to disclose
11 that other people other than the United States were thinking
12 the same things we were in our investigation?

13 A. No, I don't think I did.

14 Q. Let's go on. The next accusation here is that you did
15 not -- that you did not tell Judge Rau that the Ed Adams
16 e-mail address was one of his primary e-mail addresses that
17 he used. Do you see that?

18 A. I do understand that was an accusation, yes.

19 Q. Is that true?

20 A. That's not true.

21 Q. Let's look at paragraph 33 and let's go to the top of
22 the page. You wrote:

23 During your affiant's review of the transcript of
24 the SEC's deposition of Adams, your affiant learned that,
25 according to Adams, Adams mainly uses one e-mail address,

1 EdwardSAdams@yahoo.com.

2 Correct?

3 A. Yes.

4 Q. In fact, you did tell Magistrate Judge Rau that this was
5 his main e-mail account.

6 A. I did.

7 Q. And that was an important part of your probable cause
8 because you're seeking to search that very e-mail account,
9 correct?

10 A. That's correct.

11 Q. He further accuses you of telling Magistrate Rau that
12 Mr. Adams held certain nonlegal positions with Apollo
13 Diamond, but that you essentially concealed that he was a
14 lawyer as well for Apollo Diamond.

15 Do you remember that accusation?

16 A. I do.

17 MR. WADE: Objection. Can we focus on the
18 specific language in the motion?

19 MR. MacLAUGHLIN: Sure.

20 THE COURT: The specific language is "failed to
21 disclose the fact that he had been general counsel of Apollo
22 Diamond for most of the period in the investigation."

23 MR. MacLAUGHLIN: That's exactly right.

24 BY MR. MacLAUGHLIN:

25 A. Do you remember that?

1 A. I remember that accusation, yes.

2 Q. Is that accusation true?

3 A. I didn't specifically say general counsel in my
4 affidavit, but I did state that Mr. Adams, Mr. Monahan and
5 their law firm represented the companies over the time
6 period, and I did specifically say that Mr. Adams -- or
7 excuse me -- that Mr. Monahan was general counsel.

8 Q. Okay. So let's look at a few provisions of your
9 affidavit and let's go first to paragraph 10 at page 5.

10 A. Okay.

11 Q. So the first clause, the first sentence of that:

12 From at least 2008 through 2014, Adams and Monahan
13 were partners in a Minneapolis-based law firm,
14 Adams Monahan, LLP.

15 Correct?

16 A. Yes.

17 Q. So you're telling Judge Rau here this guy Adams is a
18 lawyer, correct?

19 A. Yes.

20 Q. Now let's look at paragraph 12, and let's look at the
21 last sentence of paragraph 12 at page 7. Do you see the
22 sentence that begins "In addition"?

23 A. I do.

24 Q. You wrote:

25 In addition, the failure of both the proxy

1 statement and the cover letter to disclose that Adams,
2 Monahan, and AM,LLP -- that's Adams Monahan, LLP, correct?

3 A. Yes.

4 Q. Acted as counsel for both ADI -- what's ADI?

5 A. Apollo Diamond.

6 Q. And Private Scio in connection with the transaction was
7 material omission.

8 Do you see that?

9 A. I do.

10 Q. So you clearly did tell Magistrate Rau that Prof. Adams
11 is a lawyer, right?

12 A. Yes.

13 Q. That he was a partner in a law firm, Adams Monahan?

14 A. Yes.

15 Q. That that law firm, Adams Monahan, represented Apollo
16 Gemstone?

17 A. Yes.

18 Q. Well, Apollo Diamond?

19 A. The companies, yes.

20 Q. And Scio?

21 A. Yes.

22 Q. And that Adams himself, if I'm reading this, also
23 represented from time to time these companies.

24 A. Yes.

25 Q. It wasn't a secret from Judge Rau that that was the

1 state of affairs.

2 A. No, it wasn't.

3 MR. MacLAUGHLIN: Your Honor, may I have a moment?

4 THE COURT: Yes.

5 (Pause)

6 MR. MacLAUGHLIN: That's all I have for right now.

7 THE COURT: All right. Why don't we go ahead and
8 get started with cross-examination. I know we won't get
9 done in the next couple minutes.

10 MR. WADE: Does Your Honor want -- there's a need
11 for a bathroom break on the defense side, but if you only
12 plan to go until noon --

13 THE COURT: Oh, absolutely. Why don't we just --
14 how do people feel about stopping now and let's talk about
15 how long people need for lunch. I know that locals can go
16 quickly, but I know you guys are not hometown -- and
17 incidentally, I should let you know we will lock the
18 courtroom, you can leave your stuff spread out, and we'll
19 also unlock either of the conference rooms if you need
20 access to phones or a place to have private conversations.

21 MR. WADE: Your Honor, for the record, since my
22 mother would object, I was born and raised and went to
23 college here in Minnesota, so --

24 (Laughter)

25 THE COURT: I just meant you don't have an office

1 right downstairs where you can eat lunch.

2 MR. WADE: That is true, Your Honor.

3 THE COURT: What if we break now and how long do
4 we need?

5 (Defense counsel confer)

6 THE COURT: Come back at a quarter till 1:00, a
7 hair under an hour? Is that going to work all around? Does
8 that make sense for -- and let me get a sense of timing.

9 Does everybody believe we will be able to conclude
10 the testimony today?

11 MR. MacLAUGHLIN: From our perspective, yes.

12 THE COURT: Yeah, but you guys always discount all
13 the --

14 (Laughter)

15 THE COURT: So let me start with them.

16 MR. WADE: I think it's going to be tight, Your
17 Honor. We'll see. Obviously we'll try to over the lunch
18 hour, the short lunch hour, eat and streamline things and
19 refocus. We weren't sure who the witnesses were going to
20 be, so there's some stuff that we need to shuffle, but we'll
21 certainly endeavor to do that.

22 THE COURT: We can talk about what happens if
23 we're not able to reach that goal if we get there.

24 Anything we need to do before I send us out for
25 lunch?

1 MR. MacLAUGHLIN: No, Your Honor.

2 MR. WADE: If I could make just one ministerial
3 point. I think there was a document that questions were
4 being asked about specific to handwriting that Counsel had
5 on the screen. I would just ask that that be marked.

6 THE COURT: I noted that as well. It's actually
7 on the copied exhibit for me as well.

8 MR. WADE: We may be referring to a different --

9 THE COURT: It's Exhibit 9 where you've helpfully
10 underlined the things you were going to ask her.

11 MR. MacLAUGHLIN: I thought I was going to get
12 away with that, but -- so we can give the Court --

13 THE COURT: I don't think it's a -- if everybody's
14 okay with it, I can obviously decide for myself whether it
15 deserves the asterisks and circle next to it or not.

16 MR. WADE: I trust the Court to give it
17 appropriate weight.

18 The only question I would ask is, I think
19 Kroells 1, there was some specific underlying that actually
20 related to questions that were being asked. And I hate to
21 do this to Counsel, but I just ask that we --

22 MR. MacLAUGHLIN: Kroells 1?

23 THE COURT: The Kroells 1 that I have, I have the
24 one that --

25 MR. MacLAUGHLIN: This is clean.

1 THE COURT: The evidence is clean.

2 MR. MacLAUGHLIN: Yes, that's a clean one.

3 MR. WADE: Kroells 1, which is reflected on the
4 ELMO right now, was what was projected for the witness and
5 questions about the handwriting and the circles were asked
6 on the record, and I'd just ask -- maybe we can make a copy
7 over lunch?

8 THE COURT: That's fine, so we can know what the
9 questions referred to. That's a good idea.

10 MR. WADE: And maybe we could mark it as Kroells
11 1-A if the Court doesn't object to that.

12 THE COURT: If you don't mind --

13 MR. MacLAUGHLIN: No, that's fine.

14 THE COURT: -- finding time to do that over lunch.
15 That way we'll know what the answers were referring to.

16 MR. WADE: Thank you.

17 THE COURT: Okay. With that we are in recess and
18 I will see everyone at a quarter till 1:00 if we can make it
19 happen.

20 (Lunch recess taken at 11:55 a.m.)

21 * * * *

22 (12:46 p.m.)

23 IN OPEN COURT

24 THE COURT: Thank you. Please be seated.

25 All right. We are going back on the record and

1 Inspector Kroells is still on the stand.

2 And I'd remind you you remain under oath.

3 THE WITNESS: Yes, ma'am.

4 THE COURT: And you can proceed.

5 MR. WADE: Thank you, Your Honor.

6 **CROSS-EXAMINATION**

7 BY MR. WADE:

8 Q. Good afternoon, Ms. Kroells.

9 A. Good afternoon.

10 Q. You're a postal inspector with the United States Postal
11 Inspector Service?

12 A. Yes, I am.

13 Q. And you were the lead investigating agent in this case?

14 A. I was one of the investigating agents on the case, yes.

15 Q. Were you the lead agent?

16 A. I don't know that we specifically get into that kind of
17 terminology. I was one of the agents who had time to work
18 on the case, and that varies depending on all of our
19 schedules.

20 Q. Did you do more investigative work in the case
21 ultimately than any of the other agents?

22 A. I guess I don't know what everybody else did. I know
23 all of us worked hard on the case.

24 Q. You started working the case, I believe you testified,
25 in 2014?

1 A. I did.

2 Q. And were you working on the case actively on and off up
3 until now?

4 A. On and off, yes.

5 Q. Are you a lawyer, ma'am?

6 A. I am.

7 Q. So you've received training on how to apply the
8 attorney-client privilege?

9 A. A long time ago, yes.

10 Q. When did you graduate from law school?

11 A. Oh, boy. 2002, I think?

12 Q. 2002? That's 15 years ago or so?

13 A. Or so, yes.

14 Q. Did you ever practice as a lawyer?

15 A. I never did.

16 Q. Have you ever received any training since law school on
17 how to apply the attorney-client privilege?

18 A. I believe I received some basic training in the
19 Inspection Service Academy and then also through the U.S.
20 Attorney's Office when they offer it.

21 Q. Are there specific courses the U.S. Attorney's Office
22 offers with respect to the application of the
23 attorney-client privilege?

24 A. I don't think specific courses, but sometimes they offer
25 some kind of courses and it's some way related to

1 attorney-client privilege.

2 Q. What is the attorney-client privilege?

3 A. My understanding it's the privileged communications
4 between the attorney and their client.

5 Q. Have you received --

6 MR. MacLAUGHLIN: May I suggest that you slide the
7 microphone a little bit closer?

8 THE WITNESS: (Complies).

9 THE COURT: Thank you. Go ahead.

10 BY MR. WADE:

11 Q. Have you received training on how to apply any other
12 legal privileges?

13 A. What do you mean specifically?

14 Q. Have you received training on how to apply the work
15 product doctrine?

16 A. I know of it. I don't know anything specific to it, I
17 don't think.

18 Q. What is the work product doctrine?

19 A. I understand that there are certain work product
20 materials that are not discoverable.

21 Q. What are those materials?

22 A. I don't know specifically. I don't know how to word it.

23 Q. Do you know generally?

24 A. No.

25 Q. Are you aware of the spousal communication privilege?

1 A. I'm aware there is one.

2 Q. What is that privilege?

3 A. I'm not sure as to specifics, but just generally there
4 is some kind of privilege between a husband and a wife and
5 their communications.

6 Q. Are you aware of a common interest or a joint defense
7 privilege?

8 A. I don't know what that is.

9 Q. You offered testimony about some of your experience with
10 regard to search warrants. Do you recall that?

11 A. I do.

12 Q. Have you ever been involved with seeking a search
13 warrant in a case -- in an instance in which the documents
14 you were seeking belonged to a lawyer?

15 A. The best way I can answer that question is saying that
16 this was the first case I had in which the main defendant
17 was an attorney. Does that answer your question?

18 Q. I think so. Mr. Adams, of course, wasn't a defendant at
19 the time you applied for the warrant.

20 A. Right, but he was the subject of the investigation.

21 Q. He was subject of the investigation and he was an
22 attorney.

23 A. Correct.

24 Q. And was this the first time you sought a warrant for
25 evidence that related to an attorney specifically?

1 A. I want to say yes, but I'm not sure.

2 Q. You can't recall any other instances --

3 A. I don't recall as I sit here, no.

4 Q. You talked a little bit about your experience with taint
5 teams. Do you recall that testimony?

6 A. I do.

7 Q. Do you have any experience dealing with taint teams in
8 the context of a taint team's work on documents that belong
9 to a lawyer?

10 A. I have never been a member of a taint team, so I don't
11 think I have that experience.

12 Q. Have you had any cases in which you've used the taint
13 team on documents that belong to a lawyer?

14 A. I have been on a case where a taint team reviewed a
15 document between a lawyer and the defendant in that case,
16 but I don't believe that that defendant was an attorney.

17 Q. And in your declaration you wrote that:

18 When executing a search warrant, care is taken to
19 avoid the review of materials that contain information
20 protected by the attorney-client privilege.

21 Right?

22 A. Yes.

23 Q. And is it your testimony that you took such care in this
24 case?

25 A. Yes, it is.

1 Q. Then in the next sentence of your declaration -- which
2 you're welcome to look at it, it's Exhibit 1 -- you say that
3 when you're searching pursuant to a search warrant and you
4 see indicia of potentially attorney-client client privilege
5 information on a document, you stop reviewing the document
6 and either set it aside or otherwise memorialize its
7 location. Do you recall the declaration?

8 A. I do recall the declaration.

9 Q. And you offered testimony that was similar to that this
10 morning.

11 A. Yes.

12 Q. You refer to this as your standard cautious practice?

13 A. Yes, it is.

14 Q. Okay. Let me ask you a few questions about that.

15 What are the indicia of potentially privileged
16 information to which you refer?

17 A. To me, that is when I'm just briefly looking at the
18 communication initially, whether I see any names that refer
19 me back to names of attorneys that represent the person, the
20 defendant at the time or the subject of the investigation.

21 Q. So is a name of an attorney an indicia that a document
22 may be privileged?

23 A. Yes. That's the main one that I look for.

24 Q. Okay. The name of an attorney is the main indicia that
25 a document may be privileged.

1 A. Correct.

2 Q. And it's not your job to assess whether there actually
3 is a privilege, correct?

4 A. I don't think so, no.

5 Q. Well, if you see an indicia of a privilege, you don't
6 stop, think back to your time in law school and make a
7 judgment as to whether the privilege actually applies to
8 that document, do you?

9 A. No. If I see a name of an attorney that I know
10 represents the subject of the investigation, then I stop
11 reviewing unless I have seen other names of people on that
12 e-mail. I know that there's an exception to that if a third
13 party is involved in the communication.

14 Q. Okay. You just testified that if the attorney
15 represents the subject of the investigation, right?

16 A. Yes.

17 Q. Okay. Are those the only instances in which an attorney
18 is an indicia of attorney-client privilege?

19 A. No. There's also when an attorney represents the
20 subject of an investigation, but not in that specific
21 investigation.

22 Q. Isn't the presence of an attorney's name on a document,
23 regardless of the status of anyone within the investigation,
24 indicia of the fact that that document may be a privileged
25 communication?

1 A. It could be, yeah.

2 Q. Okay. And if the word "privilege" appears on a
3 document, is that an indicia that the document may be
4 attorney-client privilege?

5 A. It's not one where I would immediately stop reviewing
6 the document. I am cautious, because in my experience
7 people put "Privileged" on documents that are not privileged
8 just to avoid detection.

9 Q. Okay. So let me make sure your testimony is clear here.
10 If you see the word "Privilege" on a document, you
11 do not stop reviewing that document.

12 A. Not necessarily.

13 Q. In this case when you reviewed documents, if you saw the
14 word "Privilege" on a document, you did not necessarily stop
15 and review that document.

16 A. I don't recall seeing that. I may have. I don't
17 remember.

18 Q. Are you aware that the word "privilege" hit on tens of
19 thousands of documents in this case?

20 A. I am not aware.

21 Q. You're not aware of that?

22 A. I don't know.

23 Q. But it's your testimony you didn't see the word
24 "privilege" ever on a document?

25 A. No, my testimony is that I don't recall specifically.

1 It probably was on documents I reviewed, but I don't
2 specifically recall those documents.

3 Q. Okay. And so we're clear, that word, "privilege," is
4 not an indicia that the document may be privileged.

5 A. It could be, but in this case when I'm reviewing
6 documents, I know that people who are subjects of
7 investigations put "Privilege," the word "privilege" on
8 documents that aren't necessarily privileged, so I do not
9 immediately stop just because I see the word "Privileged."

10 Q. Okay. So what do you do?

11 A. I look into the names on the -- on the e-mail to see if
12 it's attorneys that relate to the subject of the
13 investigation that represent the subject in some way in that
14 investigation or another.

15 Q. So your search for attorneys is limited to whether or
16 not to your knowledge that attorney represents the subject
17 of the investigation?

18 A. Right, either in the instant criminal investigation or
19 other investigations.

20 Q. So if there's an attorney -- well, what about in this
21 case when there's an attorney who's on the documents?

22 A. What do you mean, what about in this case if there's an
23 attorney on the documents?

24 Q. All of the e-mail you received from Yahoo! either
25 belonged to Mr. Adams, who's an attorney, or Mr. Monahan,

1 who's an attorney, correct?

2 A. Yes.

3 Q. And you're aware that they provided legal services to
4 Apollo.

5 A. Yes.

6 Q. You're aware they provided legal services to Scio.

7 A. Yes.

8 Q. You're aware they provided legal services to other
9 companies.

10 A. I believe they did, yes.

11 Q. Okay. And so if you saw the word "Privilege" and one of
12 their names appeared in the document, is it your testimony,
13 ma'am, that you did not stop reviewing the document?

14 A. That's correct, because this is what we're investigating
15 is Mr. Adams' and Mr. Monahan's activity. They are
16 attorneys, but it was my understanding that I could review
17 communications with them -- between them and other people in
18 this case if it had to do with the fraud scheme.

19 Q. Okay. And we'll talk about that in more detail, but I
20 want to make sure the record's clear on this.

21 You would review documents that you believed were
22 privileged if the privilege belonged to Apollo and the
23 communication involved Mr. Monahan or Mr. Adams.

24 A. I guess that's true, because I was told that I could
25 review those documents.

1 Q. And that seemed reasonable to you?

2 A. Yes.

3 Q. Okay. And the same is true -- would the same be true
4 for documents unrelated to Apollo or Scio?

5 A. So you're talking about other companies that Mr. Adams
6 may represent that are unrelated?

7 Q. Yes.

8 A. I would try not to review any of those, yes.

9 Q. Did you see any of those documents when you reviewed the
10 material?

11 A. Did I see other documents where Mr. Adams was
12 representing other companies? I probably did, yes. Did I
13 stop reviewing? Yes.

14 Q. Did you follow your standard cautious practice?

15 A. I tried to, yes, definitely.

16 Q. And did you communicate in those instances to Mr. Maria
17 which documents you saw?

18 A. I don't know that I would be specific as to the specific
19 documents. I would say this attorney's name who I know
20 represents Mr. Adams or Mr. Monahan, his communications are
21 still in the project.

22 Q. And were those documents removed from the database?

23 A. My understanding is that they would be.

24 Q. Okay. So if you communicated to Mr. Maria that there
25 were documents that were privileged and unrelated to the

1 Scio or Apollo investigation, you communicated that to
2 Mr. Maria and it was your expectation that he would remove
3 those from the database.

4 A. Not necessarily that he would remove them, but someone
5 would remove them.

6 Q. AUSA Maria would ensure that those materials were
7 removed, it was his responsibility.

8 A. I don't know whose ultimate responsibility it was, but I
9 was -- it was my responsibility to tell AUSA Maria, and then
10 he needed to go on and do what he needed to do. I don't
11 know exactly what his responsibility is.

12 Q. Okay. And your standard cautious practice, just so
13 we're clear, because I believe you testified you always
14 applied your standard cautious practice, right?

15 A. Mm-hm, yes.

16 Q. Except you didn't apply your standard cautious practice
17 if the potentially privileged communications related to
18 Apollo or Scio, correct?

19 A. Because I was told that I could review those
20 communications.

21 Q. So the answer is yes?

22 A. The answer is I reviewed what I was told I could if it
23 fell within the -- can you repeat your question?

24 Q. Happily. You did not follow your standard cautious
25 practice and stop reviewing documents and notify AUSA Maria

1 if the documents you were reviewing related to Apollo or
2 Scio.

3 A. We're kind of splitting hairs, I think. I mean, my
4 standard cautious practice is in not reviewing
5 attorney-client privilege documents when they're not related
6 to the case. Those were related to the case and I could
7 review those is my understanding, so of course I was allowed
8 to review those. I was still being cautious as to other
9 documents.

10 Q. You could review privileged communications if they
11 related to the case.

12 A. Not necessarily. That's a little general. If they
13 related to the fraud scheme. I did not want to review any
14 kind of documents that Mr. Adams or Mr. Monahan had with
15 attorneys that represented them specifically.

16 Q. But you could review privileged communications if they
17 related to the underlying facts that were being investigated
18 in the case.

19 A. It was my understanding, yes.

20 Q. And that's because you were specifically authorized to
21 do that by AUSA Maria.

22 A. Yes, I think so.

23 Q. Back to your indicia. If the word "attorney" appears in
24 the document, would you employ your standard cautious
25 practices?

1 A. Would I immediately stop reviewing?

2 Q. Yes.

3 A. I wouldn't immediately stop reviewing, but I would be
4 cautious as to why reviewed within the document to see if I
5 thought it might be attorney-client privilege as far as
6 Mr. Adams being represented by specific attorneys
7 themselves.

8 Q. If the word "lawyer" appeared, would you employ your
9 standard cautious practice?

10 A. Same answer. I would be cautious, but I wouldn't
11 immediately stop reviewing. I would look a little bit more,
12 but be cautious as to what I was reviewing within the
13 document to see if it was related to the fraud scheme or if
14 it might potentially be attorney-client privilege between
15 Mr. Adams and any attorneys that represented him.

16 Q. And with regard to those documents, you would only cease
17 review if it was unrelated to the underlying facts that were
18 subject to the investigation.

19 A. And if it wasn't -- I wouldn't review anything related
20 to any attorneys that represented Mr. Adams.

21 Q. Is a signature block of a lawyer appearing on a document
22 an indication that the document was protected by the
23 privilege?

24 A. It can be, yes.

25 Q. And would you employ your standard cautious practice if

1 you saw such a document?

2 A. It depends on the name of the attorney. I mean, if it
3 was Mr. Adams' or Mr. Monahan's attorney block at the
4 bottom, I was told that I could review those documents if it
5 wasn't attorney-client privilege, meaning attorneys
6 representing Mr. Adams or Mr. Monahan. So not necessarily
7 is the answer to your question.

8 Q. I'm sorry for cutting you off. I thought you were
9 complete.

10 MR. WADE: Your Honor, may I approach the board?

11 THE COURT: You may.

12 Q. I want to point you to a couple of the dates that are up
13 on this board.

14 MR. WADE: Which might I suggest to the Court we
15 take a picture of and mark it as an exhibit in the case.

16 THE COURT: Already planning on it.

17 BY MR. WADE:

18 Q. With respect to number 1 up here, March 7, 2016, I'll
19 ask you some detailed questions about that later, but that's
20 approximately the date on which you received the Yahoo!
21 e-mail?

22 A. Yes, it is, the flash drive.

23 Q. And this May date, whether it's May 2nd or May 4th,
24 that's approximately the date on which you gained access to
25 the database?

1 A. The Relativity project, yes.

2 Q. That was after some sort of privilege culling had
3 occurred?

4 A. That was my understanding, yes.

5 Q. Okay. And between the March date and the May date, you
6 employed your standard cautious practice as you've justified
7 described in your testimony?

8 A. I only reviewed documents until I turned over the flash
9 drive is my memory. There was a point in -- I believe it
10 was in March, most likely, when AUSA Maria asked us to stop
11 any kind of review while they got together the culling
12 process and put together the Relativity project, so I wasn't
13 reviewing all of that time between March and May.

14 Q. I wasn't meaning to suggest you were, ma'am, but you did
15 testify this morning that you reviewed some documents in
16 this time period, correct?

17 A. Yes.

18 Q. And my only question is: You employed your standard
19 cautious practices just described with respect to whatever
20 documents you reviewed during that time period, correct?

21 A. Yes, yes.

22 Q. And then you employed your standard cautious practice
23 from May going forward until now.

24 A. Yes.

25 Q. Let me ask you a couple questions about the warrant and

1 your efforts to seek the warrant, okay?

2 There was no exigency in obtaining this warrant,
3 was there?

4 A. You mean was there any hurry to get it done?

5 Q. Yes.

6 A. Not my understanding. We had a preservation letter in
7 place at Yahoo!

8 Q. You had been preserving evidence at Yahoo! since October
9 of 2015.

10 A. I believe both preservation letters went out in
11 approximately that time frame, yes.

12 Q. So there was no rush that necessitated you to hurry and
13 get -- pull together an affidavit to submit to the Court to
14 make sure that evidence was not destroyed.

15 A. No, I don't believe we were in any kind of real rush.

16 Q. And prior to the time period that you applied for the
17 warrant, you were aware that there had been an SEC
18 investigation ongoing?

19 A. Yes.

20 Q. And the SEC had in fact granted an access request that
21 was made by the Minnesota U.S. Attorney's Office, correct?

22 A. I'm sorry. Repeat that question.

23 Q. Yes. The SEC had granted an access request that was
24 made by the Minnesota U.S. Attorney's Office to allow the
25 U.S. Attorney's Office to obtain the SEC investigation

1 materials, correct?

2 A. I know that the SEC had shared materials with us. I
3 don't know the process by which they did that.

4 Q. But you had access to those investigation materials.

5 A. Some of them, yes. I don't how much we -- if we
6 received all they had or just they provided some of it to
7 us. I don't know.

8 Q. You had access to the SEC depositions?

9 A. Yes, I did.

10 Q. And you in fact had reviewed Mr. Adams' deposition?

11 A. I did.

12 Q. And you were aware of the various legal roles that he
13 played with respect to Apollo.

14 A. I was aware that he had represented Apollo companies in
15 some manner, yes.

16 Q. You're aware that there's testimony in the SEC
17 transcript in which Mr. Adams indicates that he was general
18 counsel of Apollo?

19 A. I do recall that testimony, yes.

20 Q. And in Mr. Adams' SEC testimony, he disclosed that the
21 Yahoo! e-mail address was his primary e-mail address, did he
22 not?

23 A. Yes, he did.

24 Q. And you testified this morning that this was his
25 personal e-mail address, right?

1 A. Yes.

2 Q. But in fact, this was his business and personal e-mail
3 address, wasn't it?

4 A. I don't know. I know he said in his deposition that it
5 was his primary and I put that information into the
6 affidavit by saying that it was his main e-mail account. I
7 don't know how he differentiates between work and personal,
8 but my understanding of a Yahoo! account is that it's a
9 personal account.

10 Q. If you can turn to Defense Exhibit 52.

11 Are you familiar with this document, ma'am?

12 A. I may have seen this. It might be an SEC document.

13 Q. This was a document that was marked as an exhibit to the
14 deposition of Mr. Adams in the SEC case.

15 A. Okay.

16 Q. And you reviewed those exhibits, correct?

17 A. You know, I don't remember if I reviewed all of those
18 exhibits or the timing of when I reviewed them, but I think
19 I remember seeing this one.

20 Q. In your search warrant application you cited several of
21 the exhibits to the SEC deposition, correct?

22 A. I don't remember if they were exhibits to the SEC
23 investigation or other -- if we received them other ways.

24 Q. And you don't recall as you sit here today whether you
25 reviewed this one?

1 A. I don't know if I reviewed this one prior to writing the
2 affidavit. It does look familiar to me that I may have
3 reviewed it at some point.

4 Q. Okay. If you go to page 2 of the letter Bates marked
5 552 on the bottom.

6 A. Okay.

7 Q. Do you see question 10?

8 A. Yes.

9 Q. And do you see the first e-mail that Mr. Adams
10 identifies in this questionnaire?

11 A. Yes.

12 Q. What is the first e-mail that Mr. Adams identifies in
13 this questionnaire?

14 A. EdwardSAdams@yahoo.com.

15 Q. And did Mr. Adams indicate whether this e-mail address
16 was a business e-mail address, a personal e-mail address, or
17 both?

18 A. I didn't get a chance to read the whole question, but
19 after the e-mail address it says "Both."

20 Q. I'm done with that document.

21 Could you go to Defense Exhibit 34, please.

22 A. Okay.

23 Q. And if you could turn to page 18 of Defense Exhibit 34,
24 which is marked with the Bates number 299.

25 A. Okay.

1 Q. And could you read for the record paragraph 34, please.

2 A. Paragraph 34 states:

3 Based on the above, your affiant believes that
4 Adams has used the e-mail addresses EdwardSAdams@yahoo.com
5 and josten1@yahoo.com and has business dealings related to
6 fraud scheme described in this affidavit and that Monahan
7 has used the e-mail address MichaelRMonahan@yahoo.com and
8 has business dealings related to the fraud scheme.

9 Q. And you wrote that paragraph?

10 A. I did.

11 Q. And so you knew this wasn't just his personal e-mail
12 address, right?

13 A. Well, I knew that he had communications regarding the
14 Apollo companies and the Scio companies.

15 Q. You knew that he used this e-mail address in his
16 business dealings, correct?

17 A. Yes.

18 Q. And his business dealings included providing legal
19 services to Apollo.

20 A. Yes.

21 Q. And providing legal services to other clients.

22 A. I was aware that he was an attorney and that he provided
23 legal services to other clients.

24 Q. You were aware that Mr. Adams had produced e-mails from
25 his Yahoo! accounts to the SEC, correct?

1 A. Yes.

2 Q. You had seen those documents.

3 A. I had seen some e-mails. I can't remember if I saw them
4 through the SEC production to us or other methods.

5 Q. And you're welcome to look through your affidavit, but
6 you reference at least two of those documents in your
7 affidavit. Do you recall that?

8 A. I recall that I reference SEC documents in the
9 affidavit. I don't recall specifically which ones, but I
10 can review it if you'd like me to.

11 Q. The fact that you recall that you reference specific
12 Yahoo! e-mails is sufficient. Thank you.

13 And those Yahoo! e-mails related to business
14 dealings of Mr. Adams, correct?

15 A. The Yahoo! e-mails that I reference in my affidavit?

16 Q. Yeah.

17 A. Can you point to which ones you're talking about so I
18 know specifically?

19 Q. The Yahoo! e-mails generally are referred to frequently
20 throughout the affidavit.

21 A. Okay. So you're talking general, not specific now?

22 Q. Well, let me ask this, Inspector Kroells:

23 Isn't the basis for you to be able to obtain the
24 Yahoo! e-mail account the fact that it included extensive
25 communications relating to business?

1 A. Yes.

2 Q. You weren't targeting Mr. Adams' personal life in your
3 investigation, were you?

4 A. No, I was looking for his dealings with the specific
5 Apollo companies and Scio.

6 Q. And you believed you had probable cause to seize those
7 documents, correct?

8 A. Yes.

9 Q. Because they were business documents.

10 A. Yes.

11 Q. You testified about the Adams Monahan e-mail address.
12 Do you recall that?

13 A. I guess I don't remember the actual e-mail address.
14 Adams Monahan, is that the one for the law firm? I know
15 that he had one for the law firm. I don't remember the
16 actual e-mail address.

17 Q. You don't remember what it was?

18 A. I don't remember what it was. I know that there was
19 one.

20 Q. How did you know that there was one?

21 A. I don't specifically remember. I just know that there
22 was -- we had conversations about any kind of e-mail
23 addresses held by the law firm and Mr. Adams and Mr. Monahan
24 at the law firm and that we weren't going to try to seek
25 those.

1 Q. And you were not going to try to seek those.

2 A. At that point, no.

3 Q. And during your investigation, do you have any evidence
4 that suggests that Mr. Adams actively used his Adams Monahan
5 e-mail address?

6 A. I don't know. I wasn't looking at that.

7 Q. Does that mean you did not have any evidence?

8 A. It wasn't something I was paying attention to, so I
9 don't know if we have evidence regarding that or not.

10 Q. Are you aware of any evidence suggesting that Mr. Adams
11 actively used his Adams Monahan e-mail address?

12 THE COURT: Can we focus on time frame?

13 Q. At the time you're applying for the search warrant.

14 A. I guess I don't remember.

15 Q. Were you aware of any such evidence at the time period
16 that you were having discussions with the investigation team
17 about whether to seek that evidence?

18 A. Do I remember having evidence regarding that e-mail
19 address?

20 Q. Yes.

21 A. I don't remember.

22 Q. Do you recall at any time period during your whole
23 investigation seeing a single document from the Adams
24 Monahan e-mail address?

25 A. I don't remember.

1 Q. And do you recall seeing any evidence that Mr. Adams
2 actively used the Adams Monahan e-mail address, ever?

3 A. I don't remember. I wasn't focused on that.

4 Q. So you don't recall seeing such evidence, I take it.

5 A. I don't remember if I did or I didn't. I wasn't focused
6 on that.

7 Q. We talked -- you testified earlier about some of the
8 representations in your warrant. Do you recall that?

9 A. Yes.

10 Q. And your perception that you felt attacked by the
11 defense?

12 A. It seemed like it, yes.

13 Q. I apologize that you feel that way. It wasn't our
14 intent. We're all doing our job, you understand that.

15 A. As am I.

16 Q. As a factual matter, you did not disclose to the Court
17 in seeking the application -- in seeking the warrant that
18 Mr. Adams was the general counsel of Apollo companies,
19 correct?

20 A. I did not state that specifically in my affidavit, no.

21 Q. And as an objectively factual matter, you did not
22 include in the second warrant the addendum to the first
23 warrant that included minimization protocols, correct?

24 A. I did not include it and I did not think it was my place
25 to include it.

1 MR. WADE: Move to strike the second half of the
2 question (sic).

3 THE COURT: Overruled.

4 Q. Let's look at that for a second. If you can bring up --
5 in fact, I will put on the ELMO Kroells 1-A. This was a
6 Government exhibit.

7 A. Okay.

8 (Counsel confer)

9 THE COURT: Okay. Let me be clear about the
10 origins of 1-A. Was that originally on 9?

11 MR. MacLAUGHLIN: Your Honor, that was originally
12 Kroells Exhibit 1, and it is the standard United States
13 Attorney's addendum to a premises unit where we think we're
14 going to grab a computer.

15 THE COURT: I understand, but the one you wrote on
16 was 1.

17 MR. MacLAUGHLIN: Was 1, and then over the lunch
18 hour I labeled it 1-A.

19 THE COURT: Okay. And can I get a copy of the
20 1-A? Do I already --

21 MR. MacLAUGHLIN: I put it on your --

22 THE COURT: I'm sure it's here. Okay. I got it.

23 Okay. Thank you. Sorry for the interruption. Go
24 ahead.

25

1 BY MR. WADE:

2 Q. And so this is a copy of a standard document that was
3 used by the U.S. Attorney's Office or is used by the U.S.
4 Attorney's Office. Are you aware of that?

5 A. That's my understanding, yes.

6 Q. And you had a discussion with counsel for the Government
7 about this addendum.

8 A. Yes.

9 Q. And as you went through with him, this addendum has to
10 do with premises searching, it doesn't have anything to do
11 with Yahoo! e-mail searching or searching of e-mails
12 obtained by Yahoo! -- by e-mail service providers.

13 A. I don't know if it doesn't have anything to do with it,
14 but my understanding is it's specifically for premises
15 warrants.

16 Q. And you're of the view that this is basically the same
17 document as what was attached to the warrant?

18 A. Yes.

19 Q. Let me leave up on the screen 1-A.

20 MR. WADE: And at risk of really confusing the
21 record, Your Honor, I'm going to put up Kroells Exhibit 2
22 that has red underlining on it. Can you see that?

23 THE COURT: Mm-hm.

24 MR. WADE: Can you read the red underlined
25 portion?

1 THE COURT: Mm-hm.

2 BY MR. WADE:

3 Q. Please read it for the record.

4 A. "Or other data storage mechanism, e.g., information
5 produced by Internet provider or social media provider."

6 Q. Doesn't that specifically contemplate e-mail provided by
7 an Internet provider?

8 A. That's what it says, but my understanding is this was
9 for premises warrants for actual devices taken during a
10 premises warrant.

11 Q. Well, that's what Kroells 1 relates to, but Kroells 1
12 and Kroells 2 are not the same document, are they?

13 A. Oh, I see what you're saying. There's an added little
14 bit to it.

15 Q. Right. The language that you just read was not in
16 Kroells 1, which is a standard protocol from the U.S.
17 Attorney's Office, correct?

18 A. Right.

19 Q. But it is in Kroells 2, correct?

20 A. I see that, yes.

21 Q. And Kroells 2 is the addendum that was attached to the
22 warrant, correct?

23 A. The original warrant with Judge Mayeron, yes.

24 Q. And as a purely objective factual matter, you did not
25 inform Judge Rau that the warrant that you were seeking was

1 different from the warrant that you had obtained from the
2 prior magistrate.

3 A. Are you saying specific to the search warrant addendum
4 being different?

5 Q. Yes.

6 A. I didn't even realize that that little part of there was
7 in there until you read it to me today. And I wasn't
8 specifically trying to mislead Judge Rau or anything like
9 that, or keep information from him regarding the previous
10 search warrant. I was trying to be as forthcoming as
11 possible.

12 Q. I'm not asking about your subjective intent. I take it
13 as offered. My question is just simply:

14 You didn't inform Judge Rau that the warrant you
15 were seeking was different from the prior warrant, correct?

16 A. I did not inform Judge Rau that the search warrant
17 addendum was added to the search warrant, no.

18 Q. Let me ask you about a couple individuals.

19 You know who Mr. Adams is, correct?

20 A. I do.

21 Q. And you knew he was a lawyer at the time you applied for
22 the warrant?

23 A. I did.

24 Q. And at the time you executed the warrant?

25 A. I did.

1 Q. Michael Monahan, you knew he was a lawyer at the time
2 you applied for the warrant?

3 A. I did.

4 Q. And at the time you executed the warrant.

5 A. I did.

6 Q. J.R. Maddox, you knew he was a lawyer at the time you
7 applied for the warrant?

8 A. I did.

9 Q. And at the time you executed the warrant.

10 A. I did.

11 Q. Chris Mumm, you knew he was a lawyer?

12 A. Yes.

13 Q. At the time you applied for the warrant?

14 THE COURT: What is that last name, please?

15 MR. WADE: Mumm, M-U-M-M, Your Honor.

16 THE COURT: Thank you.

17 Q. You knew Mr. Mumm was a lawyer both at the time you
18 applied for the warrant and at the time you executed the
19 warrant, correct?

20 A. Yes.

21 Q. James Sankovitz, S-A-N-K-O-V-I-T-Z, you knew he was a
22 lawyer at the time that you applied for the warrant and at
23 the time you executed the warrant, correct?

24 A. Yes.

25 Q. And you knew that Sandy Ward was an employee of

1 Mr. Adams' law firm, correct?

2 A. I knew that she was an assistant to Mr. Adams. I don't
3 know specifically what entity employed her, if it was the
4 law firm or what.

5 Q. Did you interview Ms. Adams in this case?

6 A. Ms. Ward I did.

7 Q. I'm sorry?

8 A. Are you asking if I interviewed Ms. Ward?

9 Q. I'm sorry, yes. Did you interview Sandy Ward in this
10 case?

11 A. I did.

12 Q. And did you ask her who she was employed by?

13 A. I'm sure I did. I don't remember the answer to that
14 question. I know she said that she was an assistant to
15 Mr. Adams.

16 Q. And do you know if she worked from his law offices?

17 A. I don't remember that.

18 Q. And you knew that Josh Riley worked for Mr. Adams' law
19 firm?

20 A. I'm trying to remember if he worked for the law firm or
21 for Focus.

22 Q. Do you know?

23 A. I don't remember at this point.

24 Q. Did you interview him?

25 A. I did.

1 Q. And did you ask him who he worked for?

2 A. I'm sure I did. I don't recall the answer specifically.

3 Q. Your discussions with -- let me strike that and shift
4 just in time period a little bit here. I'm going to talk to
5 you about the time that you obtained the documents from
6 Yahoo! in March of 2016, okay?

7 A. Okay.

8 Q. And around that time, AUSA Maria told you that you could
9 review the files when you received them, correct?

10 A. Yes.

11 Q. And you specifically asked him whether you could review
12 communications between Mr. Adams and members of the Linares
13 family, correct?

14 A. Yes.

15 Q. And you specifically asked him about that because you
16 were concerned that those documents may be privileged,
17 correct?

18 A. I think it was more of a concern of being cautious and
19 not that I necessarily thought that they might be privileged
20 and that I couldn't review them. I just wanted to make sure
21 that I could and I was being cautious.

22 Q. You wanted to be cautious about what?

23 A. About protecting any kind of attorney-client privilege
24 that I am not supposed to review.

25 Q. Okay. So you asked him because the concern that you had

1 or the caution that was going off in your mind related to
2 whether -- the fact that the documents might be privileged,
3 correct?

4 A. I just wanted -- yes, I wanted to make sure that they
5 weren't -- that I could review them.

6 Q. And he told you that you could.

7 A. Yes.

8 Q. And he told you that you could review the privileged
9 communications with the Apollo and Scio employees as well.

10 A. I think it was kind of a general question, but yes, that
11 I could review those documents.

12 Q. That was in March of 2016?

13 A. I don't specifically remember when we had that
14 conversation. It would have been either prior to receiving
15 the flash drive or the day that I informed him that I
16 received it or something like that. It was probably
17 ongoing communications about what we could review once we
18 received the flash drive.

19 Q. Okay. And so counsel for the Government has suggested
20 that that date is March 7th, 2016, right?

21 A. The day I received the flash drive, yes.

22 Q. So it was in that time frame within a few days or a week
23 that you believe you had this conversation with Mr. Maria?

24 A. The specific conversation regarding the Linares family?

25 Q. And the privileged -- and the privileged communications

1 relating to Apollo and Scio.

2 A. I don't remember specifically when I had it. I don't
3 remember if it was in March or if it was prior to that.

4 Q. But it wouldn't have been later than when you started
5 accessing those documents.

6 A. I don't know. I don't remember.

7 Q. You spoke about this in your declaration, correct?

8 A. Mm-hm.

9 Q. Do you want to take a look at that?

10 A. I think it was around that time frame, or it was
11 possible that I saw something in the e-mails and I wanted to
12 make sure that I could review them, but it was --
13 specifically to the Linares family, I think it was around
14 that time frame.

15 Q. Okay. If you go to Exhibit 1, Defense Exhibit 1,
16 paragraph 9, take a moment and review that to yourself.

17 A. (Witness complies).

18 Q. Does that refresh your recollection as to the general
19 time period when you had these communications about
20 privilege with AUSA Maria?

21 A. Yes.

22 Q. When did you have those communications?

23 A. Around the time frame before I received the flash drive.

24 Q. And that was March of 2016.

25 A. That I received the flash drive.

1 Q. Do you know whether the company had actually waived
2 attorney-client privileges at -- strike that.

3 Do you know whether anyone had waived any
4 attorney-client privileges at the time that you had that
5 conversation?

6 A. I guess that's kind of a general question. I don't know
7 how to answer that.

8 Q. Let me try it a different way.

9 Do you know whether Apollo had waived its
10 attorney-client privileges at the time that you had that
11 communication with AUSA Maria?

12 A. I don't believe that they had, but I'm not sure.

13 Q. Do you know whether AUSA -- I'm sorry -- do you know
14 whether Scio had waived its attorney-client privileges at
15 the time you had that conversation with AUSA Maria?

16 A. I don't remember. I don't know.

17 Q. Was there any reason that caused you to believe that
18 they had waived their privileges?

19 A. I don't remember.

20 Q. Do you know whether either of those companies ever
21 waived their privileges?

22 A. I believe they did.

23 Q. Respectfully, I'm not focused on your belief. Do you
24 know whether they did or not?

25 A. I don't recall specifically receiving any kind of letter

1 or anything stating that they did, but it was my
2 understanding that at least one or both of those companies
3 did waive. I don't know specifically when.

4 Q. What is the basis for your understanding? How did you
5 learn that?

6 A. It would have been communications that I had with the
7 AUSAs.

8 Q. Were those in writing?

9 A. I don't remember.

10 Q. Do you recall having any written communications with
11 AUSAs about privilege waivers?

12 A. I may have. I don't remember.

13 Q. Were you asked to review your e-mails in connection with
14 these proceedings?

15 A. Yes.

16 Q. And did you review those e-mails?

17 A. I did.

18 Q. And in reviewing those e-mails, did you see any
19 communications between yourself and the prosecution team
20 regarding privilege waivers?

21 A. Sitting here today, I don't remember. I did review my
22 e-mails, but I don't remember if there was anything in
23 there.

24 Q. You did that last month?

25 A. It would have been probably the end of December, yeah.

1 Q. You certainly -- as you sit here today, you can't point
2 to any document in which you were informed of that in
3 writing.

4 A. No, I can't.

5 Q. Okay. Do you have any more evidence of when you learned
6 of when the privilege was waived? Do you have any other
7 further recollection on that?

8 A. I remember something about in the summer of '16 there
9 was some kind of waiver, but I don't know -- I don't
10 remember specifically what company that related to.

11 Q. Okay. Who has knowledge about the waiver and the scope
12 of the waiver and the timing of the waivers?

13 A. I don't know.

14 (Pause)

15 THE COURT: She said, "I don't know."

16 Q. Other than that one instance in 2016, the summer of
17 2016, are you aware of any -- learning of any privilege
18 waivers that had occurred?

19 A. As I sit here today, I don't recall any.

20 Q. But you knew in March of 2016 that no privilege waivers
21 had yet occurred, correct?

22 MR. MacLAUGHLIN: Your Honor, asked and answered
23 at this point.

24 THE COURT: I think that also mischaracterizes the
25 testimony.

1 Q. Do you recall offering testimony earlier today about
2 waivers on direct examination?

3 A. I don't remember. I know that we talked about waivers,
4 yes.

5 Q. And you talked about this conversation that you had with
6 AUSA Maria, correct?

7 A. You're talking about related to the Linares family?

8 Q. And whether --

9 A. -- and just in general?

10 Q. I think we would make --

11 A. I'm sorry.

12 Q. -- job a lot easier if we avoid talking over each other.
13 I'll do my best, okay?

14 A. Go ahead. I'm trying.

15 Q. Do you recall having a conversation about whether you
16 could look at privileged documents with AUSA Maria in
17 testimony that you offered on direct examination on that?

18 A. Yes.

19 Q. And didn't you testify on direct examination that AUSA
20 Maria told you it was his expectation that there would be
21 waivers?

22 A. Yes.

23 Q. And so there hadn't been waivers at the time that you
24 had that conversation, correct?

25 A. My understanding specific to the Apollo companies, there

1 hadn't been waivers at that point.

2 Q. Have you had any other case in which you were
3 specifically authorized by a prosecutor that you could --
4 that you could look at privileged documents before there was
5 a waiver of privilege?

6 MR. MacLAUGHLIN: Objection. Relevance.

7 THE COURT: Overruled.

8 A. I guess I don't know how to answer that question. I'm
9 sure there are exceptions and I was allowed to look at
10 potentially privileged communications or documents, but
11 because of who the communications were between I was allowed
12 to look at them, meaning because they were between subjects
13 of an investigation, for example.

14 Q. The conversation that you had with AUSA Maria about your
15 ability to look at privileged documents without a waiver
16 being in place, do you recall that?

17 A. Yes.

18 Q. Did you have any conversation with a prosecutor on a
19 prior occasion that was similar to that?

20 MR. MacLAUGHLIN: Objection. Relevance.

21 THE COURT: Overruled.

22 A. I guess I'm not sure what you're asking for. I mean, I
23 thought I just answered it. I have had communications with
24 AUSAs in other investigations regarding communications or
25 documents that I could look at because of who is in the

1 documents. Even though there might typically be some kind
2 of privilege, I was allowed to look at them even though
3 there wasn't a waiver.

4 THE COURT: And that will be the answer.

5 Q. Between March 15th and March 17th you conducted searches
6 using keywords and dates on the materials on the thumb
7 drive, correct?

8 A. I'm sorry. What dates did you say?

9 Q. March 15th and March 17th of 2016.

10 A. Yes, I looked -- or I guess I conducted searches.

11 Q. This was being done to prepare for witness interviews
12 that you were going to be conducting?

13 A. Yes.

14 Q. Which witness interviews were you preparing for?

15 MR. MacLAUGHLIN: Objection. Relevance and beyond
16 the scope.

17 THE COURT: Overruled. It's directly raised by
18 the issues in the motion.

19 A. I was preparing to interview a number of people, all of
20 which who had potential information regarding the fraud
21 scheme. I don't know that I could list every single one of
22 them sitting here today, but it would be people involved in
23 the Apollo companies, people involved in the Scio companies
24 and the transaction that occurred between the two, Apollo
25 and Scio, and investors.

1 Q. So in those two days where you reviewed the contents of
2 the thumb drives before it was turned over?

3 A. Yes.

4 Q. You prepared for all of those interviews?

5 A. No. I mean, I probably had specific searches, but I
6 mean, I'm always looking for other documents related to
7 other interviews as well. Just because I'm looking, say,
8 for documents related to one interview doesn't mean that if
9 I come across a document related to a potential other
10 interview that I'm going to completely ignore that document
11 if it's related to the fraud scheme. I'm still going to
12 pull it.

13 Q. Ma'am, can you look at Defense Exhibit 1 --

14 A. Okay.

15 Q. -- paragraph 12, please.

16 A. Okay.

17 Q. Do you have paragraph 12 in front of you?

18 A. Yes, and I understand what you're saying. I was
19 preparing for interviews and using keywords related to those
20 interviews, but I was also not going to just ignore other
21 documents that I saw in there.

22 Q. Okay. But were you preparing for specific interviews,
23 ma'am?

24 A. I don't remember specifically what interviews. I know
25 that we were going to be doing interviews of the Linareses.

1 I know that we were going to be interviews of -- I think Pat
2 Doering was one, Terrence Howard was one. I don't remember
3 all of them that I was preparing for at that specific time.

4 Q. Do you remember any of the ones that you were preparing
5 for at that specific time?

6 A. I just named a couple.

7 Q. You were preparing for those at that specific time?

8 A. Terrence Howard and Pat Doering, I believe.

9 Q. Were you preparing for a Sandy Ward interview at that
10 specific time?

11 A. Yes, I was.

12 Q. And did you do searches that were focused on preparing
13 for the Sandy Ward interview?

14 A. I may have. I don't remember my specific searches.

15 Q. Were you preparing for a Chris Mumm interview at the
16 time -- this time in March of 2016?

17 A. I remember preparing for that interview. I don't know
18 if it was specifically during that time frame.

19 Q. And as you sit here today, you don't recall any other
20 interviews that you were specifically preparing for in those
21 two days in which you accessed documents on the thumb drive.

22 A. It would help -- I don't remember. I don't remember
23 without reviewing documents.

24 MR. WADE: Your Honor, for the record, we had
25 asked for a log of just the dates of the interviews and the

1 witnesses to address this very purpose and the Government
2 declined to provide that.

3 THE COURT: Do you have 302s of those witness
4 interviews?

5 MR. WADE: We don't have them. They have not been
6 produced.

7 THE COURT: Thank you.

8 MR. WADE: I'd renew my request that we just get a
9 log. I understand if the Government doesn't want to
10 disclose its Jencks statements until a later date. We've
11 had some collegial discussions with counsel on that, but I
12 think for purposes of this hearing, knowing what interviews
13 were occurring during the time period that they were
14 executing the warrant is directly relevant.

15 THE COURT: We'll return to this after we're done
16 with the witness testimony. Thank you.

17 BY MR. WADE:

18 Q. Do you know about how long you searched on March 15th?

19 A. No, I do not.

20 Q. Do you know about how long you searched on March 16th?

21 A. I think the date -- the dates on the e-mails that I
22 printed out was the 15th and the 17th, not the 16th.

23 Q. Okay. So when you printed the e-mails, they had dates
24 on the footer?

25 A. Yes.

1 Q. And that was March 15th to March 17th?

2 A. Yes.

3 Q. Do you know what search terms you used during those
4 searches?

5 A. I do not.

6 Q. Do you have any record of that at all?

7 A. No, not that I'm aware of.

8 Q. Do you know what date restrictions you used during that
9 period?

10 A. No. It would have been after the October 25th, 2006,
11 but other than that I don't know.

12 Q. You reviewed documents that came up in response to your
13 search terms?

14 A. Yes.

15 Q. Do you know how many documents you reviewed?

16 A. No.

17 Q. Do you know which documents you reviewed?

18 A. I know which documents I printed, so I must have
19 reviewed those, obviously. Other than that, I don't.

20 Q. You know you reviewed at least 22 documents.

21 A. Right.

22 Q. Those were the ones you printed.

23 A. Right.

24 THE COURT: Can you remind me -- sorry to
25 interrupt, Mr. Wade. Can you remind me, those 22 e-mails

1 are not in my evidence, correct?

2 MR. WADE: They're not, Your Honor.

3 THE COURT: These are part of the whole
4 sequestering of the entire universe of documents until we
5 get this decided.

6 MR. WADE: That's correct, Your Honor. And we had
7 agreed not to mark those documents or use those documents in
8 connection with this hearing. We had a little bit of a
9 disagreement of counsel. It's our view that we should just
10 submit a sealed exhibit to Your Honor with those documents
11 just so we have in the record what those 22 documents are.
12 We got them from the taint team. We're going to adhere by
13 our restrictions and not ask questions that go --

14 THE COURT: Let's put a pin in that conversation
15 until later. I'm now accruing a list of the things I want
16 to ask you later. Sorry to interrupt.

17 MR. WADE: Sure.

18 BY MR. WADE:

19 Q. Did you print all of the documents that you looked at?

20 A. I don't think I did. I don't know.

21 Q. Did you use any of the documents that you printed in any
22 witness interviews?

23 A. I looked back at that. I don't know that I actually
24 showed any witnesses any of those 22 e-mails.

25 Q. When you said you looked back at that, what did you do?

1 A. I looked back at my memorandums of interviews to see if
2 I had actually shown witnesses that I thought I had been
3 preparing for at the time.

4 For example, I think I had possibly been preparing
5 for Terrence Howard's interview at the time. I looked back
6 to see if we had shown him any e-mails by reading the
7 memorandum or 302, and I did not see that we had shown him
8 any e-mails. It was a phone conversation.

9 Q. Did you share any of those 22 e-mails with any other
10 members of the prosecution team?

11 A. I don't know.

12 Q. Where did you maintain those documents?

13 A. In a folder in my office, or multiple folders in my
14 office.

15 Q. Are there other documents that you printed out during
16 your searches that exist within folders in your documents?

17 A. Yes, there are other documents that I've printed out
18 during this investigation that are within those folders.

19 Q. Did you print all of the documents that you looked at in
20 those two days?

21 A. I think I answered that already. I don't remember. I
22 doubt that I printed everything I actually saw.

23 Q. In fact, you saw some documents when you were doing
24 those searches that were outside the scope of the warrant,
25 correct?

1 A. I remember generally that I had seen something related
2 to other cases that Mr. Adams had and I avoided those.

3 Q. They were outside the scope of the warrant, right?

4 A. Right.

5 Q. And you were sufficiently concerned or cautious that you
6 actually raised the fact that there were documents that were
7 outside the scope of the warrant on the thumb drive with
8 AUSA Maria, correct?

9 A. I believe we had those conversations, yes.

10 Q. Can you go to DX 1 at paragraph 13, the --

11 A. Yes, and that's what I just said. I believe we had
12 those conversations.

13 Q. You said you believed you had those conversations. You
14 did in fact have that conversation with Mr. Maria, correct?

15 A. Yes, I think we did.

16 Q. And seeing this was sufficiently significant that you
17 thought you should share that fact with the lead prosecutor
18 in the case?

19 A. Yes.

20 Q. Did you do anything to flag or otherwise document which
21 of the documents that were outside the scope of the warrant
22 that you reviewed?

23 A. I don't remember at that time. I don't know that that
24 program has that ability. I probably would have written
25 myself a note potentially. I don't remember this

1 specifically, but I can tell you my general practice. I
2 probably would have written a note to myself saying this is
3 some kind of business that appears to be not related to the
4 Apollo or Scio companies.

5 Q. On a document-by-document basis?

6 A. I don't know if I understand your question.

7 Q. Your standard practice of taking notes if you identify
8 something that's not relevant. If you see a document that's
9 not relevant, do you create a log of documents that are not
10 relevant or not covered by the warrant?

11 A. Either a mental note or written down on a Post-it note
12 so that I can communicate that I have found potentially
13 irrelevant information to AUSA Maria in this case.

14 Q. Okay. And so if you found potentially irrelevant
15 information within the documents that you were searching,
16 you -- every time you would tell AUSA Maria about it?

17 A. I would keep a running mental note or something on a
18 Post-it note.

19 Q. How many times did you do that in this case?

20 A. I don't remember.

21 Q. Do you have any documentation of logs of materials that
22 were not covered by the warrant?

23 A. That was nothing that I kept, so no.

24 Q. Did you take any efforts to ensure that those documents
25 that were not covered by the warrant were excluded from the

1 materials that were within the database?

2 A. I don't remember specifically. I mean, I know that we
3 had talked about taking irrelevant information out of the
4 database. I don't know if or when that specifically
5 happened. I know -- as I said before, I mean, we're all
6 learning at the beginning of this as to what is irrelevant
7 and what is relevant, so lot of it is to just mentally
8 knowing myself that this might not be related to the Apollo
9 or Scio companies and the fraud scheme.

10 Q. So you would mentally note that, but my question is: Do
11 you have any system for keeping track of the materials that
12 you looked at that were not relevant?

13 A. Of specific documents that I looked at that were not
14 relevant? No.

15 Q. Did you have any tags in your database for not relevant
16 or outside the scope?

17 A. Not when I was looking at the e-mails prior to the
18 Relativity database.

19 Q. Okay. Did you have tags after you created the
20 Relativity database that said "not relevant," "outside the
21 scope"?

22 A. Not that I remember, no.

23 Q. Okay. You never had any tags that indicated that the
24 document was not covered by the warrant.

25 A. None that I used.

1 Q. Are you aware of anyone else on the investigation team
2 using such tags?

3 A. I don't know.

4 Q. You mentioned that there was a program that you used to
5 look at these documents just a second ago.

6 A. Yes.

7 Q. What was the program?

8 A. So when I received the flash drive on March 7th, I was
9 required to download Mozilla, I think it was, to actually
10 review the records within the flash drive.

11 Q. Okay. Did you copy the thumb drive or the contents of
12 the thumb drive when you received it?

13 A. Did I make a copy of the entire flash drive when I
14 received it?

15 Q. Or any parts of the flash drive.

16 A. I did not make a copy of the flash drive, no.

17 Q. You accessed the flash drive, but you didn't copy its
18 contents anywhere.

19 A. I don't know how that works, how -- I don't know how the
20 review of the e-mails work within the Mozilla program, so I
21 don't know if it does something with it in there. I'm
22 sorry. I'm not an IT person. But I did not physically make
23 a copy of the flash drive.

24 Q. Do you still have the Mozilla program on your computer?

25 A. I don't know. It's not my computer. It's a standalone

1 computer within our office.

2 Q. Did the Mozilla program remain on the computer after you
3 turned the thumb drive over?

4 A. I don't know.

5 Q. Were the documents still available -- are they still
6 available on the Mozilla program on that computer?

7 A. I don't know. I have not looked at them.

8 Q. Can you go to DX 33.

9 A. Okay.

10 Q. This is a chain of custody tag, correct?

11 A. Yes.

12 Q. And am I correct that this -- you're familiar with this
13 document.

14 A. I am.

15 Q. I take it -- this can be an important document in an
16 investigation, correct?

17 A. It can be, yes.

18 Q. And I take it you take special care to make sure that
19 the information that you put out is accurate?

20 A. Yes.

21 Q. This indicates that you handed off the thumb drive to
22 Special Agent Khan of the Federal Bureau of Investigation on
23 March 14th, 2016, correct?

24 A. That's what this says, yes.

25 Q. Okay. But you testified that the documents that you

1 printed you printed on March 15th and March 17th, correct?

2 A. Because that was the date on the bottom of those e-mails
3 that I printed. I don't know why there's a discrepancy as
4 to dates.

5 Q. Well, is it possible there's a discrepancy because you
6 searched the documents after you handed over the thumb drive
7 to Special Agent Khan?

8 A. I don't know. All I know is I stopped reviewing any
9 kind of documents on Mozilla after AUSA Maria told me that
10 there was going to be a heightened filter process. I don't
11 know why there's a discrepancy as to dates. I don't
12 remember.

13 Q. Doesn't it appear that there was a copy of the contents
14 of the thumb drive that was maintained in your office?

15 A. It's a possibility, or the dates on those e-mails that
16 were printed out was wrong. I don't know. I was going by
17 the dates on the e-mails as to when I reviewed them. I
18 didn't have specific recollection other than that the date
19 on the e-mails says the -- the e-mails I printed said the
20 15th and the 17th, so that's when I assumed I printed them
21 out on those two dates.

22 Q. Do you have any reason to believe the date on the Postal
23 Inspection Service's computer is wrong? Does that come up?

24 A. I don't know. I have no idea.

25 Q. You talked about the heightened filtering process that

1 you went through or that AUSA Maria told you you needed to
2 perform on the contents of the thumb drive, correct?

3 A. Right.

4 Q. And you had learned of this from AUSA Maria?

5 A. Yes.

6 Q. And you understood that he had had a conversation with
7 AUSA Kokkinen about this.

8 A. Some kind of conversation, yes. I wasn't privy to the
9 exact specifics of that conversation.

10 Q. And this heightened filtering process was designed to
11 separate out content that the investigation team could not
12 access and search, correct?

13 A. Right.

14 Q. And this was designed to filter out the potentially
15 privileged documents?

16 A. Right.

17 Q. And it was designed to filter out documents that were
18 not relevant, correct?

19 A. I know that we discussed that. I don't know if the
20 specific culling at that point at that point in time was
21 designed to take out the potentially irrelevant documents.
22 I don't know when that happened specifically, at this time
23 or later, or if it happened --

24 MR. MacLAUGHLIN: Which date are you talking about
25 now? What date are you inquiring about? I missed it.

1 MR. WADE: I was just talking about the heightened
2 filtering process.

3 MR. MacLAUGHLIN: Okay.

4 BY MR. WADE:

5 Q. Can you look at paragraph 15 of your declaration at
6 Defense Exhibit 1?

7 A. Yes. And I know I said that we discussed filtering
8 potentially irrelevant and potentially privileged, but I
9 don't know -- I didn't have anything to do with the
10 filtering process, so I don't know if the irrelevant
11 filtering took place or when.

12 Q. Well, let's look at paragraph 15, okay?

13 A. Okay.

14 Q. Do you have it in front of you, ma'am?

15 A. Yes.

16 Q. In there you say that based on the conversations with
17 AUSA Maria, that you learned that you needed to do
18 heightened filtering to remove information that was not
19 relevant, correct?

20 A. That we had that conversation, yes.

21 Q. Do you know whether that was ever done?

22 A. That's what I just said. I don't know if the relevancy
23 filter actually occurred or when. I don't know.

24 Q. Were you ever asked to develop a set of relevance terms?

25 A. I don't remember.

1 Q. When you searched through your documents in connection
2 with the preparation for this hearing, did you come across
3 any documents that indicated that you had started to prepare
4 relevance terms for use on the database?

5 A. Yes. So sometime in November, I believe it was, of '16
6 we were starting to create tags for relevant documents
7 within the Relativity database. Is that what you're asking?

8 Q. No. Those are tags, correct?

9 A. Yes.

10 Q. Not search terms, correct?

11 A. Well, they can be both, but I'm just trying to answer
12 your question as correctly as possible.

13 Q. Okay. Did you ever create any search terms that were
14 specifically designed to filter out documents that were not
15 relevant?

16 A. I don't remember.

17 Q. When you searched through your documents, did you come
18 up with any materials that suggest that you did do such
19 work?

20 A. Not that I remember.

21 Q. You talked about your collaboration on the search terms
22 relating to the potentially privileged documents. Do you
23 recall that testimony?

24 A. Yes.

25 Q. Did you prepare drafts of potentially privileged search

1 terms?

2 A. Did I actually write something out and maintain it? Not
3 that I remember.

4 Q. Did you send any e-mails to anyone that included the
5 terms that you thought should be included in potentially
6 privileged searches?

7 A. Other than the e-mail that I discussed in my direct
8 examination where I had found some potentially privileged
9 documents related to Felhaber and Arnstein, I don't
10 remember.

11 Q. You don't recall anything other than that one document.

12 A. Right.

13 Q. But you did add some names that you thought should be
14 included to the terms orally, is that right?

15 A. I remember having conversations with AUSA Maria about
16 potentially privileged names that we needed to use in the
17 filtering process.

18 Q. Okay. Do you recall which names you suggested be added?

19 A. No.

20 Q. Did you recall -- did you suggest any general search
21 terms that should be used to identify potentially privileged
22 documents?

23 A. I don't recall.

24 Q. Did you suggest that the name of Mr. Adams' then
25 criminal defense counsel be included in the materials?

1 A. I don't remember. I don't recall the name. Are you
2 talking about Mr. Hopeman?

3 Q. Yeah. Prior to your e-mail when you were initially
4 developing the terms, did anyone suggest that the current
5 criminal defense lawyer should be included within the search
6 terms?

7 A. I don't recall. As I said, I don't remember
8 specifically what names we discussed.

9 Q. Around this time, you had had a meeting with
10 Mr. Hopeman, correct?

11 A. Yes.

12 Q. And Mr. Petrosinelli, my law partner, participated in
13 that meeting, correct?

14 A. Yes.

15 Q. Did you suggest that Mr. Hopeman's name or
16 Mr. Petrosinelli -- that was in March --

17 MR. WADE: I'm sorry, Your Honor. Strike that.

18 Q. That was in March of 2016?

19 A. The meeting with Mr. Hopeman and Mr. Petrosinelli? Yes.

20 Q. Okay. And did you suggest that either of their names be
21 added to the search terms?

22 A. I don't remember specifically.

23 Q. Who was the ultimate -- who's the person who ultimately
24 decided which terms should be used?

25 A. I don't know. I provided the information that I had for

1 suggestions as to what search terms should be used to AUSA
2 Maria.

3 Q. Could you please turn to Defense Exhibit 14. And you're
4 not on the e-mail, but could you turn to the second page.

5 A. Okay.

6 Q. Do you see this as a set of potential search terms?

7 A. I see --

8 Q. Did you ever review this document?

9 A. I don't remember it.

10 Q. Did you ever give specific input on this document?

11 A. I'm sorry. I don't remember this document. I may have
12 reviewed it or not. I don't remember.

13 Q. Do you recall ever reviewing any other drafts like it?

14 A. I don't remember.

15 Q. And Mr. Maria prepared this?

16 A. I don't know.

17 Q. If you go back to the prior page, Mr. Maria circulated
18 this.

19 A. Yeah, but I don't know if he prepared it or not.

20 Q. Fair enough. Have you done privileged searches in
21 databases previously?

22 A. Am I trying to look for privileged documents in
23 databases? No, I'm trying to avoid them. I don't
24 understand your question.

25 Q. It probably wasn't a very good one. Have you ever tried

1 to come up with a list of privileged search terms?

2 A. In other cases?

3 Q. Yes.

4 A. I don't remember right now.

5 Q. Okay. Did these terms seem reasonable to you?

6 A. Do these terms right here today seem reasonable?

7 Q. Yes.

8 A. Well, as I told you before, just because there's the
9 word "privileged" or "attorney" or "lawyer" on a document
10 doesn't mean that there is an actual privilege in the
11 document, so I don't know that it's reasonable or not, but
12 if that's what the AUSAs came up with, then that's what they
13 came up with. I don't remember this document at all.

14 Q. Do you know that those general terms weren't included?

15 A. Excuse me?

16 Q. Have you been told that these search terms were never
17 used, the general terms?

18 A. I don't know.

19 Q. You don't know?

20 A. I don't know.

21 Q. You got access to the Relativity database on May 5th,
22 2016; does that sound right?

23 A. Around that time frame.

24 Q. And you had understood that the privilege terms had been
25 applied at that point?

1 A. The terms had been applied to filter out potentially
2 privileged documents, yes.

3 Q. And you went about conducting searches in the database?

4 A. Yes.

5 Q. And you reviewed documents that came up in response to
6 the searches?

7 A. Yes.

8 Q. And were some those documents outside the scope of the
9 warrant?

10 A. Potentially. I don't remember specifics, but there may
11 have been.

12 Q. You viewed thousands of documents, correct?

13 A. I don't remember how many, but I reviewed a lot, yes.

14 Q. Okay. And is it fair to say that a significant number
15 of those documents were outside the scope of the warrant?

16 A. I don't remember. You got to understand I'm reviewing,
17 like you said, a lot of documents and I'm going through them
18 very, very fast as to whether I can see something that might
19 be relevant to the case, and if it's relevant to the case,
20 then I pull it, whether I tag it or print it or somehow keep
21 it for the investigation.

22 Q. And if it's not relevant to the case, you just move to
23 the next document?

24 A. Yes, unless it's potentially privileged, and then I
25 provide that information to AUSA Maria. And previous, I

1 also was letting him know that there was potentially
2 irrelevant documents in there and what those were.

3 Q. After you got access to the database on May 5th, 2016,
4 did you inform AUSA Maria whenever you saw documents that
5 weren't relevant?

6 A. I'm trying to remember. I don't remember at this point.

7 Q. But as you search for the documents, if one of your
8 searches pops up a series of documents, you would click
9 through the documents, is that right?

10 A. Yes.

11 Q. And if you saw a document that was relevant, you might
12 tag it or print it.

13 A. Right.

14 Q. And if it wasn't relevant, you'd just move to the next
15 document.

16 A. Right.

17 Q. You didn't have a tag or any way to record that the
18 document wasn't relevant, correct?

19 A. There wasn't a tag that I used in the program, no.

20 Q. Okay. And then after you did one set of searches, if
21 you then went back in to do more searches that were related,
22 you might hit on some of those same relevant documents,
23 correct?

24 A. I don't know. It's possible.

25 Q. Or other members of the investigation team might hit on

1 them as well.

2 A. I don't know.

3 Q. Did the work that you did in the database to I think you
4 said sort of enhance your understanding of the case, was
5 that similar to the kind of work that you do in a database
6 of documents that was produced pursuant to a grand jury
7 subpoena?

8 A. What do you mean? I don't understand the question.

9 Q. I take it you've had cases where counsel for companies
10 have produced documents in response to a subpoena in a
11 database?

12 A. I have had cases where counsel produces documents
13 pursuant to a grand jury subpoena, yes.

14 Q. And if there's a substantial volume of documents in
15 those instances, you just go about doing keyword searches to
16 try to find the relevant ones, right?

17 A. If it's a database.

18 Q. Or if it's not a database, if counsel produces a lot of
19 e-mail in response to a grand jury subpoena, would you load
20 it into a database sometimes?

21 A. I wouldn't specifically. I would talk to the U.S.
22 Attorney's Office and decide how they wanted to go about
23 reviewing any kind of voluminous database.

24 Q. Okay. In your investigative work --

25 MR. MacLAUGHLIN: May I object on relevance

1 grounds about what she would do with grand jury documents
2 which aren't involved here at all?

3 MR. WADE: Goes to reasonableness, Your Honor, if
4 I could have a little leeway here.

5 THE COURT: I think I know where you're going.
6 Sustained. How she would handle grand jury documents isn't
7 relevant to whether her handling of these documents was
8 reasonable.

9 MR. WADE: Well, let me try one more question and
10 if it draws an objection and it's sustained, then I'll move
11 on, if that's okay.

12 THE COURT: Okay.

13 BY MR. WADE:

14 Q. Was the way that you treated the Yahoo! e-mail database
15 any different from the way that you treated any other
16 database that you received during an investigation?

17 A. It's kind of a loaded question. I mean, I would say
18 that there probably are differences. I mean, there's a lot
19 of different types of evidence that I receive and I guess
20 I'm always careful as to whether or not I'm reviewing
21 potentially attorney-client privilege that I'm not supposed
22 to review. So in that way I'm always careful, but I guess I
23 don't really understand your question.

24 Q. Well, as a general matter, in the database that's at
25 issue in this case, you search for documents, correct?

1 A. Yes.

2 Q. Based on witness interviews you were preparing for?

3 A. Yes.

4 Q. And based on meetings you were going to have to discuss
5 the facts?

6 A. Probably.

7 Q. And if you learned about information in one interview,
8 you might go and do some follow-up searching in the
9 database, is that right?

10 A. That's probably true, yes.

11 Q. And you'd use the knowledge that you acquired to then
12 maybe do some additional searching thereafter, correct?

13 A. Yes.

14 Q. It would just kind of build on itself, correct?

15 A. It's a continuous learning curve, yes.

16 Q. In other words, you treated this database the way that
17 you treated any database of e-mails that you used during an
18 investigation.

19 A. I don't know that that's true.

20 THE COURT: Okay. Let's move on.

21 Q. If you could go to DX 20.

22 This is a -- this is an e-mail that you sent to
23 AUSA Maria following your standard practice, correct?

24 A. Yes.

25 Q. And this was in mid-May, not long after you got access

1 to the database.

2 A. Correct.

3 Q. You pretty promptly raised this concern with AUSA Maria.

4 A. Yes.

5 Q. In fact, you at this point -- I'm sure you don't have

6 this memorized, but you had only accessed the database on

7 four days, on May 5th, May 10th, May 11th and May 12th.

8 Does that seem roughly consistent with your recollection?

9 A. If that's what the documents say, then that's probably
10 accurate.

11 Q. Okay. And within those four days, you identified
12 potentially privileged documents relating to these two
13 e-mail addresses, correct?

14 A. Yes.

15 Q. And one of them related to Mr. Adams' then criminal
16 defense counsel.

17 A. Yes, but that doesn't mean that we hadn't flagged that
18 before. Just because I'm seeing it in this database doesn't
19 mean that we hadn't flagged that before.

20 Q. So that may have been excluded previously.

21 A. It's possible it was and then I was still seeing it or
22 some other form of the e-mail address.

23 Q. If it was excluded before, why do you think you would
24 see it at this time?

25 A. I have no idea.

1 Q. Okay. Do you have reason to believe it was previously
2 excluded?

3 A. It would make sense.

4 Q. You would expect that documents of criminal defense
5 counsel would be excluded from the database, correct?

6 A. Right.

7 Q. And you also raised one other e-mail extension that you
8 thought might contain privileged information, the Arnstein
9 e-mail extension?

10 A. Yes.

11 Q. And you asked questions about whether you could look at
12 particular Scio documents, correct?

13 A. Yes.

14 Q. If you go to DX 21, AUSA Maria responded 24 minutes
15 after you sent that e-mail, correct?

16 A. Yes.

17 Q. And he told you that he had noticed the Hopeman
18 documents as well, right?

19 A. Yes.

20 Q. And he told you that there were also documents that
21 related to Mr. Adams' tax counsel, correct?

22 A. Yes.

23 Q. That was Tom Brever at Foster Brever?

24 A. Yes.

25 Q. And prior to May 16th, had Mr. Maria alerted you to the

1 existence of these Hopeman and Brever communications?

2 A. I don't know. I know that he did on this date. I don't
3 know if he did previously.

4 Q. Do you infer from the way he wrote this e-mail that this
5 was the first you were learning of this?

6 A. That there were additional Hopeman and Felhaber and
7 Brever documents still within the database?

8 Q. Yes.

9 A. It looks like it.

10 Q. It looks like this is the first time you're learning of
11 that, right?

12 A. Yes.

13 Q. You don't recall a conversation from AUSA Maria alerting
14 you to that prior to May 16th, do you?

15 A. I don't recall.

16 Q. And do you know when AUSA Maria had last accessed the
17 database at this point?

18 A. No.

19 Q. Okay. The Foster Brever documents, these related to a
20 guy working on Mr. Adams' tax issues, correct?

21 A. Okay. I don't recall. I mean it says that in here, but
22 sure, yes.

23 Q. Okay. And tax offenses had become part of the
24 investigation of Mr. Adams during this time period, correct?

25 A. I don't know specifically when they became a part of the

1 investigation, but yes, IRS was added to the case and tax
2 charges were looked at.

3 Q. In fact, criminal investigator Brandon Belich is on this
4 e-mail, correct?

5 A. Yes, Special Agent Belich is on the e-mail.

6 Q. Now Deputy Marshal Belich, I understand?

7 A. Yes.

8 Q. And does his presence on the documents and the fact that
9 he was added to the case suggest that at least as of this
10 time, the tax issues were part of the investigation?

11 A. Yes.

12 Q. And there was searching that was done for documents that
13 related to the tax offenses, correct?

14 A. I'm sure there were, yes.

15 Q. Well, in fact, you did some of those searches, didn't
16 you?

17 A. I think I pulled some documents related to the Murry --
18 I think he was a CPA.

19 Q. I'll come back to Mr. -- Mr. Murry -- I'll come back to
20 Mr. Murry.

21 And as you were doing your general searching
22 within the database, if you saw documents that related to
23 tax offenses, would you pass them along to Agent Belich?

24 A. Possibly. I don't remember, but yeah, it's possible
25 that I did.

1 Q. But the purpose of having him on the team was for his
2 tax expertise.

3 A. Yes.

4 Q. And in fact, at one point during the investigation AUSA
5 Maria asked you to create a tag in the Relativity database
6 relating to Adams' tax issues, correct?

7 A. I vaguely recall -- I think we had that as one of the
8 potential tags that we were discussing adding to the
9 Relativity project.

10 Q. Well, why don't we look at Defense Exhibit 60.

11 A. Okay. Yes, I see it.

12 Q. And just so the record's clear, there is an e-mail to
13 you on November 3rd -- I'm sorry -- on November 3rd, 2016 at
14 7:53 a.m. in which Mr. Maria asks you to add an Adams tax
15 tag to the Relativity database containing the Yahoo!
16 e-mails, correct?

17 A. He doesn't ask me to add it. He says that it should be
18 added maybe.

19 Q. It should be added to the list of tags, correct?

20 A. Correct.

21 Q. And was it?

22 A. I don't know.

23 Q. Well, there were tags added to the database, correct?

24 A. Yes. I don't remember if that specific one was on there
25 as I sit here today.

1 Q. Did you follow up on his request?

2 A. To have these tags added --

3 Q. Yes.

4 A. -- to ask somebody? I don't remember. I would think
5 that I would have, but I don't remember.

6 Q. Well, you say in the e-mail above that:

7 Thanks. And I can e-mail Cory and ask who would
8 add the tags.

9 Correct?

10 A. Right.

11 Q. And the tags that you're talking about are the ones that
12 were identified by you and the additions of Mr. Maria,
13 correct?

14 A. Right.

15 Q. And did you e-mail Cory to have the tags added?

16 A. I don't remember. I would think that I would have, but
17 I don't remember specifically --

18 Q. Ultimately the tags were added, right?

19 A. -- so I would guess that I did.

20 Q. Going back to DX 21, in total there were five or maybe
21 six different groups of potentially privileged documents
22 that are identified in this e-mail, correct?

23 A. So you're talking about Arnstein being one, Felhaber
24 being one, like that?

25 Q. Yes.

1 A. And Brever being one, so there's three. Potentially the
2 Nelson Mullens information. That's four.

3 Q. Okay. So four --

4 A. Around four.

5 Q. Four categories. And also the Caplan Law? Do you see
6 that in there?

7 A. Oh, right, mm-hm, in the middle.

8 Q. So that's five?

9 A. Looks like it potentially, yes.

10 Q. Okay. So five categories of additional documents were
11 identified, including Mr. Adams' then criminal defense
12 counsel and his tax counsel.

13 A. As potentially privileged.

14 Q. And this is on May 16th, 2016.

15 A. Yes.

16 Q. Did you immediately stop reviewing documents in the
17 database?

18 A. No, but if I came across those, I did not look at them.

19 Q. Do you know why it took nearly three weeks to have those
20 sensitive privileged documents removed from the database?

21 A. I do not.

22 Q. Because just so the record's clear, those documents
23 weren't removed according to the Government's chart until
24 June 7th, 2016, correct?

25 A. According to the chart, that's correct.

1 Q. And according to the chart, at that time 1500 additional
2 privileged documents were removed, correct?

3 A. Approximately, yes.

4 Q. Presumably relating to these terms, correct?

5 A. I don't know, but yes.

6 Q. You don't know because you didn't do the work, but the
7 timing matches up on that?

8 A. I guess. I don't know.

9 Q. You prepared your affidavit in November of 2015,
10 correct?

11 A. Around that time period and prior.

12 Q. And between then and April of 2017, your knowledge about
13 the case increased substantially, correct?

14 A. I would say so, yes.

15 Q. Indeed, the focus of the Government's investigation
16 changed after you prepared the warrant application, correct?

17 A. Yes, it did.

18 Q. The Government shifted away from a theory that was
19 focused on fraud in connection with the Scio/Apollo
20 transactions into a theory that was focused on Mr. Adams'
21 alleged embezzlement or misappropriations of funds from
22 Apollo or its investors, correct?

23 A. I would say it's focusing on both at that point, later.
24 We were focusing on both.

25 Q. Right, but the embezzlement fraud, if you will, or

1 crime, that became the focus of the investigation after you
2 prepared your affidavit, correct?

3 A. That was added to it, yes.

4 Q. That was added to what?

5 A. To the investigation as a focus.

6 Q. Right. That became a new issue after you submitted your
7 warrant affidavit.

8 A. Another issue to look at, yes.

9 Q. And the Government, as we talked about, also began
10 investigating potential tax charges against Mr. Adams at
11 some point after you prepared the warrant application,
12 correct?

13 A. I don't know if it was after or before. I know I was
14 working with Special Agent Belich during the time I was
15 writing the affidavit.

16 Q. And do you know when Special Agent Belich was put on the
17 case?

18 A. Specifically, no.

19 Q. And as the Government's focus and theories on different
20 schemes and crimes changed, you continued to access
21 documents in the Yahoo! database, correct?

22 A. I continued to access documents within the Relativity
23 database.

24 Q. And you continued to search for documents that related
25 to your evolving theory of the case.

1 A. Yes.

2 Q. And let's go to DX 10 at 92.

3 So Defense Exhibit 10, Bates labeled 92 in the
4 bottom right-hand corner, and I call your attention to
5 paragraph 4. There it says:

6 There is probable cause to believe that Mr. Adams
7 had committed mail and wire fraud by concealing and failing
8 to disclose material information to company shareholders
9 prior to seeking shareholders' approval of transactions
10 which personally benefited him and Monahan.

11 Correct?

12 A. Yes.

13 Q. And in the pages that follow you lay out that alleged
14 scheme to defraud the shareholders in connection with the
15 transactions that occurred between Scio and Apollo.

16 A. Correct.

17 Q. And the core of the scheme outlined in your affidavit,
18 which you should feel free to reference, involves the
19 failures by Mr. Adams and Monahan to disclose to
20 shareholders either various information relating to the
21 transactions or information regarding their involvement with
22 those two companies, correct?

23 A. Yes, it does discuss that.

24 THE COURT: Okay. We're going to take a break.

25 MR. WADE: And we would just ask that while the

1 witness is on examination that she not confer with counsel.

2 THE COURT: That seems like a standard operating
3 procedure.

4 MR. WADE: Okay.

5 THE COURT: Thank you.

6 You can step down. We're going to take a
7 ten-minute recess.

8 (Recess taken at 2:35 p.m.)

9 * * * *

10 (2:50 p.m.)

11 IN OPEN COURT

12 THE COURT: Please be seated. We're back and
13 ready to go. Everyone necessary is here.

14 All right. Let's go.

15 MR. WADE: Thank you, Your Honor.

16 BY MR. WADE:

17 Q. Inspector Kroells, I think we were looking at Defense
18 Exhibit 10 when we left off and we were talking about the
19 Scio/Apollo transactions. Do you recall that?

20 A. Yes.

21 Q. And those transactions as set forth in your affidavit
22 occurred in 2011 and then into 2012, correct?

23 A. The transition from the Apollo companies to the Scio
24 companies, yes.

25 Q. And that was the primary focus of your affidavit was on

1 those events in 2011 and '12.

2 A. Yes.

3 Q. And in your affidavit you didn't mention or discuss
4 Mr. Adams' alleged embezzlement or theft of the kind set
5 forth in the indictment in this case, correct?

6 A. You know, I don't remember if the numbers that we came
7 up with as far as the money going to Mr. Adams included that
8 at the time or not.

9 Q. Okay. Feel free to take a look -- I'll represent to you
10 that I've read the affidavit and I have seen no reference to
11 embezzlement or taking of monies anywhere in the affidavit,
12 but I want to make sure our record's clear. So please take
13 your time and review the affidavit and let us know if there
14 are any places in your affidavit where you mention or
15 discuss Mr. Adams' alleged embezzlement or theft of the kind
16 set forth in the indictment in this case.

17 A. Right. I don't think I specifically talked about
18 embezzlement or theft, but I did discuss, I believe, the
19 money going to Mr. Adams, Mr. Monahan, and AMLLP.

20 Q. To which statements are you referring now? Could you
21 point me to the statements?

22 A. I'm looking for it. I'm trying to remember if that
23 information was put in here.

24 MR. MacLAUGHLIN: Your Honor, no facial challenge
25 having been made, I question the relevance of this line of

1 questioning.

2 MR. WADE: We made a facial --

3 THE COURT: Hopefully we're almost done with this
4 line of inquiry.

5 MR. WADE: We have made a facial challenge, Your
6 Honor.

7 THE COURT: To the four corners -- is that what
8 you're referring to, Mr. MacLaughlin?

9 MR. MacLAUGHLIN: I don't understand there to be a
10 challenge to whether there's sufficient probable cause.
11 There's an allegation that the warrant itself was broad.
12 The witness is now being asked what she did or didn't say in
13 establishment of probable cause.

14 MR. WADE: May we approach?

15 THE COURT: Sure.

16 I don't need a record for this. Thank you. I'll
17 let you know.

18 (Discussion at the bench off the record)

19 IN OPEN COURT

20 THE COURT: All right. I'm going to overrule any
21 objection to this line of questioning at this time without
22 deciding on the merits of the argument that the defense is
23 trying to support, but it's at least appropriate for
24 inquiry.

25 Go ahead.

1 MR. WADE: Was there a question pending? Would it
2 be possible to have it read back? I apologize.

3 (Pause - court reporter begins reviewing notes).

4 THE COURT: Could you just throw it out there
5 again? Is that okay?

6 MR. WADE: Sure.

7 THE COURT: Let's just get back on track. Thank
8 you.

9 BY MR. WADE:

10 Q. Ma'am, I think when we left off the questioning, you
11 were looking to determine whether your affidavit included
12 any language relating to the embezzlement scheme that's set
13 forth in the indictment in this matter. Did you locate any
14 such language?

15 A. And I couldn't recall exactly the parameters of the
16 dates as we were focusing to in the affidavit as far as the
17 funds going to Mr. Adams, Mr. Monahan, and AMLLP. I found
18 it on pages 14 and 15 of the affidavit. Paragraph 27
19 discusses -- and it looks like we kept those date parameters
20 between 2011 and 2013 as far as the funds going to
21 Mr. Adams, Mr. Monahan, and AMLLP.

22 Q. And this relates to payments of money from Scio that
23 were made to Mr. Adams or his law firm or his law partner,
24 correct?

25 A. It looks like there's also payments from ADI to the law

1 firm.

2 Q. In connection with the transaction between Scio and
3 Apollo?

4 A. I think it's duplicative I think is what we're saying in
5 the affidavit, that there were two payments to the law firm,
6 one from Apollo and one from Scio.

7 Q. Right, arguably both for work relating to that
8 transaction, correct?

9 A. I don't know if it was specific for work relating to
10 that specific transaction, but for work that they did for
11 Apollo and/or Scio.

12 Q. Okay. Let's look -- if you can turn to DX 69, which is
13 the first superseding indictment.

14 A. Yes.

15 Q. If you look at the first page, paragraph 1 of DX 69, it
16 alleges a scheme to defraud Apollo shareholders by
17 misrepresenting that investors' money that would be used to
18 fund company operations was actually going to Mr. Adams,
19 correct?

20 A. Yes.

21 Q. You didn't discuss at all in your warrant affidavit that
22 scheme, correct?

23 A. I don't see that as a separate scheme.

24 THE COURT: Mr. Wade, can I encourage in the
25 interest of time, if what you're doing is comparing what's

1 in the superseding indictment with what's in the warrant
2 application, that I can do that also and maybe we could
3 focus on if there's any other things that this witness has
4 knowledge of related to the discrepancy between those two
5 documents. I'll anticipate that you would do a searching
6 exploration of the gaps between the two documents and look
7 for some hints of that in your briefing, but I think in the
8 interest of time, could we move to what she alone can
9 provide? Does that make sense?

10 MR. WADE: Sure.

11 THE COURT: Okay.

12 MR. WADE: Your Honor, it was my intention to ask
13 the postal inspector a series of questions that relate to
14 searches that were done with respect to specific entities
15 and dates that are identified in the indictment, but are
16 nowhere mentioned in the affidavit. It's a totally
17 different scheme.

18 I was similarly intending to ask questions that
19 show that a series of tags were created related to those
20 topics. I think that's probably apparent from the documents
21 and I would be willing to skip over that if the Court is
22 willing to accept a summary of that in post-hearing
23 briefing.

24 THE COURT: And Mr. MacLaughlin, what's the
25 Government's position as to allowing me to draw the lines

1 between the searches done, the -- you know, I guess here's a
2 concern with cutting you off on this:

3 Does this witness have unique knowledge about
4 whether the searches done pertain to things that were
5 anticipated in the warrant, as well as things that were
6 ultimately in the indictment, and I don't want to foreclose
7 either you the opportunity to demonstrate that or the
8 Government the opportunity to point out that there's overlap
9 between those searches and the search warrant.

10 So I don't think I should probably end run that
11 line of questions. I just don't know that I need the
12 questions comparing the affidavit to the indictment.

13 Does that make sense.

14 MR. WADE: Fair point, Your Honor. Let me try
15 to --

16 THE COURT: It is 3:00 o'clock and we are still on
17 our first witness.

18 MR. WADE: I am -- counsel is mindful of that.

19 THE COURT: Okay.

20 BY MR. WADE:

21 Q. Postal Inspector Kroells, did you search for documents
22 relating to Jill Zipkin?

23 A. I did.

24 Q. Did you review numerous documents relating to Jill
25 Zipkin?

1 A. I did.

2 Q. Did you search for documents relating to Mr. Adams' sale
3 of warrants?

4 A. I did.

5 Q. And did you review numerous documents relating to
6 Mr. Adams' sale of warrants?

7 A. I don't remember specifically what I found, but I was
8 looking for records about that, yes.

9 THE COURT: Sale of what? Could you --

10 MR. WADE: Warrants.

11 THE COURT: Search warrants?

12 MR. WADE: Stock warrants.

13 THE COURT: Okay.

14 MR. WADE: Sorry.

15 THE COURT: That's okay. I just wanted --

16 MR. WADE: It's not the warrant that we've been
17 spending most of our time on this morning, Your Honor.

18 BY MR. WADE:

19 Q. Did you search for documents relating to DL Investments?

20 A. I did.

21 Q. And did you review numerous documents relating to
22 DL Investments?

23 A. I did.

24 Q. Did you search for documents relating to RL Investments?

25 A. I did.

1 Q. And did you review numerous documents relating to
2 RL Investments?

3 A. I don't remember how many, but I'm sure I reviewed some,
4 yes.

5 Q. And did you review documents relating to
6 ADR Investments?

7 A. I did search for that, yes.

8 Q. And did you review documents relating to ADR
9 Investments?

10 A. I most likely did find some, yes.

11 Q. And we talked about tags that you worked to have created
12 or at least were involved in trying to create tags. You
13 recall that testimony?

14 A. Yes.

15 Q. And feel free to look at the DX 60. That's where that
16 e-mail is.

17 A. Okay.

18 Q. Do you recall that there was a tag created for Julie
19 Zipkin?

20 A. Jill Zipkin? Yes.

21 Q. I'm sorry. Jill Zipkin. And Larry Zipkin?

22 A. Yes.

23 Q. And there is a tag for the sale of stock in warrants?

24 A. Yes.

25 Q. There's a tag for ADR Investments?

1 A. Yes.

2 Q. There's a tag for RL Investments.

3 A. Yes.

4 Q. There's a tag for DL Investments.

5 A. Yes.

6 Q. And we discussed there's a tag for taxes.

7 A. That was, yes, another one.

8 Q. Added by AUSA Maria.

9 A. Maria.

10 Q. And there were searches for Murry, correct?

11 A. Yes.

12 Q. And who is Mr. Murry?

13 A. He's a CPA.

14 Q. So these searches related to potential tax charges
15 against Mr. Adams?

16 A. I would guess so, yes.

17 Q. And did you know that communications with Mr. Murry were
18 privileged because Mr. Murry was retained by Mr. Adams' tax
19 counsel?

20 A. I know that Mr. Adams' tax counsel produced e-mails that
21 they believed were not privileged and it was after that that
22 I did the search on Murry. I'm guessing -- I don't recall,
23 but I'm guessing that those searches in the Relativity
24 database that I did for Murry was to duplicate the e-mails
25 that the tax -- or the attorney for the tax person produced.

1 Q. Well, Mr. Murry was served with a grand jury subpoena in
2 this case, correct?

3 A. Yes.

4 Q. And that subpoena was referred to Mr. Brever, correct?

5 A. I believe so, yes.

6 MR. MacLAUGHLIN: Your Honor, I object on
7 relevance grounds to this line of questioning.

8 THE COURT: What's the relevance for this line of
9 questioning?

10 MR. WADE: This directly relates to looking at --

11 THE COURT: Privileged documents?

12 MR. WADE: And tax documents.

13 THE COURT: Overruled.

14 BY MR. WADE:

15 Q. If you could go to DX 67.

16 A. Okay.

17 Q. Have you ever seen this letter, ma'am?

18 A. I think this is the one I'm talking about. I know I've
19 seen a letter like this.

20 Q. And in this letter Mr. Brever informs Mr. Murry that
21 Murry & Associates were hired under a Kovel arrangement by
22 his firm. Do you see that?

23 A. I see that.

24 Q. And it says that's for the purposes of assisting and
25 rendering legal advice, correct?

1 A. I see that.

2 Q. And he then notes in the letter that many of those
3 communications with the Murry firm are privileged, correct?

4 A. Yes.

5 Q. And he in fact attaches a privilege log asserting
6 privilege to the documents, correct?

7 A. It looks like it, yes.

8 Q. Okay. Were you informed in December of 2016 by
9 Mr. Maria that the Murry documents were privileged?

10 A. I don't remember. I think -- I don't remember what
11 document I reviewed, but I know that I have a document -- or
12 I've seen a document that was from I believe Mr. Brever or
13 an associate of his.

14 THE COURT: Pause for a moment.

15 MR. MacLAUGHLIN: May we approach and have a side
16 bar about this Murry issue?

17 THE COURT: Yes. Do we need to be on the record?

18 MR. MacLAUGHLIN: I think it wouldn't hurt.

19 **AT SIDE BAR**

20 * * * *

21 (REPORTER'S NOTE: Side bar audio system not fully
22 engaged. The following is the reporter's best attempt at a
23 distance of 10 feet away)

24 * * * *

25 THE COURT: Let me ask a question. Whom are we

1 protecting this conversation from, the witness?

2 MR. MacLAUGHLIN: (Inaudible) on this issue.

3 THE COURT: Do you want to move towards the
4 microphone?

5 MR. MacLAUGHLIN: Sure. I'd like one of the other
6 lawyers to speak to it.

7 THE COURT: Oh. Okay.

8 MR. MacLAUGHLIN: That's all.

9 MR. RANK: Your Honor, I think this is (inaudible)
10 legal issue (inaudible) ask questions and presuming that the
11 communications with Mr. Murry are privileged. Every one of
12 Mr. Wade's questions are in fact -- they're privileged
13 communications (inaudible) presumption of the communications
14 (inaudible) Mr. Murry as a CPA were actually privileged.
15 There's legal argument as to what -- they're not privileged
16 communications. Assuming that they're going to brief that
17 and raise the issue (inaudible) and the searches are
18 actually done, and the fact of the searches that were done
19 with respect to Mr. Murry are out there, they're laid out in
20 what we provided to the defense, and so the issue of whether
21 there was privileged communications is a legal issue.

22 THE COURT: So at the time that she was doing the
23 searches she was receiving counsel from the Government about
24 the collective belief that these were privileged. Do we
25 need to ask her about these, or is that just part of the

1 record?

2 MR. WADE: I think it's for the record, Your
3 Honor. If he doesn't have anything to add as to why the
4 search was conducted, you know, maybe we don't need to ask
5 questions, but --

6 THE COURT: Well, let's not do quite as much
7 foundation and get right to if she has (inaudible).

8 MR. WADE: But the fact of the matter is, just so
9 Your Honor knows where this is going, whether it's
10 privileged or not -- and I'm not meaning to -- I understand
11 you reserve your rights to assert that it's not. I don't
12 fully understand what that argument might be. But the fact
13 of the matter is that she was specifically advised --
14 Mr. Murry was specifically advised that these documents were
15 privileged. They relate directly to the indictment, all
16 counts of the indictment.

17 THE COURT: This isn't her testimony. We don't
18 need her view. I'm trying to get us back to the things she
19 (inaudible) so we can --

20 MR. WADE: Well, she reviewed the documents after
21 the Government was informed of the privilege.

22 THE COURT: Okay. So let's establish that and
23 then move on as to -- whether Counsel is correct that it's
24 privileged or not, we'll worry about that another day.

25

1 IN OPEN COURT

2 THE COURT: Okay. Back on the full record.

3 We're going to focus these questions on the areas
4 related to Mr. Murry specific to this witness's knowledge
5 and understand that other relevant considerations might come
6 up in briefing.

7 BY MR. WADE:

8 Q. Postal Inspector Kroells, did you search for Murry
9 documents after December 1st, 2016?

10 A. I did.

11 Q. Did you review Murry documents after December 1st, 2016?

12 A. I don't know what you mean by review, but I think what
13 happened was I specifically was pulling the documents that
14 we were told were not privileged. I was looking for an
15 alternative source. I was probably asked to look for an
16 alternative source for the e-mails that we were being told
17 by Mr. Brever were not privileged communications.

18 Q. What was an alternative source?

19 A. Meaning the Relativity database.

20 Q. Didn't you have the documents already if they were not
21 privileged?

22 A. Yes, so I think they were produced by Mr. Brever, but in
23 my experience as an agent, sometimes it's nice to have
24 alternate sources for the documents as well. So I think
25 probably what happened -- because I would never purposely

1 pull documents that I was told were attorney-client
2 privilege. What I'm understanding probably happened was I
3 was told to replicate the e-mails that we were told were not
4 privileged and to pull them from the Relativity database.

5 Q. Do you believe you were instructed to do that?

6 A. I don't know. That's my guess as to what happened,
7 because I wouldn't have actually pulled documents related to
8 attorney-client privilege after being told that it was.

9 Q. Do you know whether any steps were taken to exclude
10 Murry documents from the Yahoo! database on or about
11 December of 2016?

12 A. I do not know.

13 Q. When you searched for the Murry documents after
14 December 1st, 2016 within the Yahoo! database, documents
15 came up in response to your search, correct?

16 A. Yes.

17 Q. Were you aware that additional filtering was done in
18 April of 2017 as noted on the board by the Government?

19 A. I don't know that. I've been told that recently, but I
20 didn't know that at the time, I don't think.

21 Q. Did you have any role in that filtering?

22 A. I don't remember.

23 Q. Have you searched your documents for that time period?

24 A. I don't remember if I specifically looked at that time
25 period.

1 Q. Do you recall finding any documents that indicate that
2 you were involved in any filtering in April of 2017?

3 A. Not that I remember.

4 Q. Did you have any conversations with AUSA Maria about the
5 development of search terms in 2017?

6 A. I don't remember.

7 Q. Did you have any conversations with anyone else about
8 the creation of relevant search terms in 2017?

9 A. I don't remember.

10 Q. Well, if you could look at DX 24. And if you can just
11 focus -- have you seen this document before?

12 A. I don't know that I have. I'm not on the e-mail header.

13 Q. Okay. Do you believe that you were ever shown this list
14 of search terms here?

15 A. If it's the search terms that are -- or the tags that
16 are in Relativity, then I would have seen it, but I don't
17 know.

18 Q. Well, there's indeed some overlap with the tags, right?
19 Correct?

20 A. It looks like there was, yes.

21 Q. But you don't recall ever being shown these search
22 terms, do you?

23 A. I guess I don't understand what you're saying. I mean,
24 these are all very common search terms related to this case.

25 Q. Do you recall ever being shown a draft list of search

1 terms of this kind that was designed for relevance
2 filtering?

3 A. I don't recall.

4 Q. If you look -- ESA, do you know what that term refers
5 to?

6 A. ESA Consulting. It's a company of Mr. Monahan's.

7 Q. Do you know what the letters E-S-A stand for?

8 A. I'm assuming Edward S. Adams, but I don't know that for
9 certain.

10 Q. Those are Mr. Adams' initials, correct?

11 A. Correct.

12 Q. Okay. Was every Yahoo! e-mail that contained his
13 initials within the scope of the warrant?

14 A. I wouldn't think so.

15 Q. You see MRM?

16 A. I do.

17 Q. Okay. Whose initials are those?

18 A. Those are Mr. Monahan's initials.

19 Q. Okay. Was every Yahoo! e-mail with Mr. Monahan's
20 initials within the scope of the warrant?

21 A. Not every one, probably not.

22 Q. Do you see the word "diamond"?

23 A. Yes.

24 Q. Was every Yahoo! e-mail that contained the word
25 "diamond" within the scope of the warrant?

1 A. I don't know. It's possible that there were some that
2 were not, but I don't know.

3 Q. You see the terms "Lisa L"?

4 A. Yes.

5 Q. That was Lisa Linares?

6 A. I'm assuming. I don't -- I've never seen this document
7 before that I remember.

8 Q. No, but do you know "Lisa L" is Lisa Linares based on
9 your work in this case?

10 A. There is a Lisa Linares.

11 Q. Would every Lisa Linares communication -- that was
12 Mr. Adams' sister-in-law, correct?

13 A. Yes.

14 Q. Would every communication with Lisa Linares be within
15 the scope of the warrant?

16 MR. MacLAUGHLIN: Your Honor, object to this line
17 of questioning. It's in evidence, but she hasn't seen the
18 documents and these arguments can be made without
19 reference --

20 THE COURT: I also note this calls for a legal
21 conclusion. It's up to me, I think, whether the documents
22 that are listed are within the scope of the warrant, right?

23 MR. WADE: I'm sorry?

24 THE COURT: It's up to me whether the documents
25 are within the scope or not, right? It's not up to this

1 agent. I understand why you're asking her who these people
2 are, because I have no idea, but the conclusion about
3 whether, for instance, every time you see ESA is within or
4 not within the scope of the warrant isn't up to her, right?

5 MR. WADE: Sure, but ultimately any search that's
6 done is not necessarily up to her, but whether --

7 THE COURT: No. I mean, you're kind of verging
8 into the question I have to answer, which is whether the
9 ultimate pool is beyond the scope of the warrant or not. So
10 I appreciate the line of questions that helps me understand,
11 for instance, what Zipkin means, but I don't need her to
12 opine whether that was beyond the scope of the warrant.

13 MR. WADE: Fair enough, Your Honor. We'll move
14 forward.

15 BY MR. WADE:

16 Q. One more specific term, Linares. That's the family name
17 of Mr. Monahan's in-laws?

18 A. Yes.

19 Q. And some Linareses were involved in the family business?

20 A. Yes, they were.

21 Q. And some Linareses were not, right?

22 A. I do not know how many people are in that family, so I
23 don't know.

24 Q. But you don't have any reason to believe that every
25 member of the Linares family was involved in the business,

1 do you?

2 A. I don't know.

3 Q. And I may have misspoke. It's Mr. Adams' in-laws, not
4 Mr. Monahan's in-laws.

5 A. Oh. I missed that too.

6 Q. But it's Mr. Adams' in-laws, correct?

7 A. Correct.

8 Q. After you obtained the warrant in this case, what
9 instructions did you give to the investigation team
10 regarding what they could search for within the database?

11 A. I don't know that I gave any instructions. We had the
12 search warrant and that's what we used.

13 Q. How did you use that?

14 A. To help us determine what we could search for.

15 Q. How did you specifically employ the search warrant?

16 A. I used it in determining what I could search for.

17 Q. Would you look at the search warrant before you
18 performed every search?

19 A. No.

20 Q. When did you look at the search warrant?

21 A. I looked at it obviously when I wrote it, when I swore
22 it out and potentially after if I needed to refresh my
23 memory, but I was trying to stay within the scope of the
24 search warrant when I did all of my searches.

25 Q. Was that search warrant circulated to every other member

1 of the investigation team?

2 A. I don't know.

3 Q. Did you do that? Did you circulate it?

4 A. I don't know. I don't remember.

5 Q. Were you given instructions by other members of the
6 prosecution team regarding what you could search for within
7 the Yahoo! e-mails?

8 A. Well, we've kind of already touched on that. I mean, I
9 had a conversation with AUSA Maria about some of the
10 information that I could look at and some of the information
11 that we couldn't look at, obviously, the attorney-client
12 between Mr. Adams and his attorneys. Is that what you're
13 asking? I don't understand, I guess.

14 Q. That's a fair clarification. I apologize.

15 Other than what we've already discussed, were you
16 given any other specific instructions of what you were able
17 to search for and not search for?

18 A. I may have been. I don't recall.

19 Q. Were you given any sort of memorandum or search plan
20 that outlined what was appropriate to search for?

21 A. I don't recall that.

22 Q. Was there any search briefing that occurred?

23 A. I don't recall that either.

24 Q. Were the documents within the database specifically
25 allocated out to different members of the investigation team

1 to cover a different portion of the documents?

2 A. I'm not sure if I understand.

3 Q. Well, was there a plan to complete the review of the
4 Yahoo! e-mails?

5 A. After it was in the Relativity database?

6 Q. Yes.

7 A. I know we had discussed at one point a plan, but I don't
8 know that that actually happened.

9 Q. Okay. So you didn't have a specific quota of a certain
10 number of documents that you needed to review to do your
11 portion of the searching.

12 A. No. I think it was whoever had time and had access to
13 the database was doing the searching.

14 Q. And they were doing keyword searching.

15 A. Yes.

16 Q. There wasn't a universe of material that you wanted to
17 make sure you got through the material.

18 A. I don't believe so, no.

19 Q. Different groupings of documents were not assigned out
20 to different members of the investigation team for review.

21 A. Not that I recall.

22 Q. Was progress of how much review had happened within the
23 database tracked in any way, how many documents had been
24 reviewed?

25 A. I have no idea.

1 Q. Do you know when the review of the Yahoo! e-mails was
2 complete?

3 A. I don't know. What do you mean, complete?

4 Q. When did the investigation team complete its review of
5 the Yahoo! e-mails?

6 A. I don't know. I don't understand the question,
7 complete. I mean, we were told at a certain point we
8 couldn't review the database anymore. I don't know at that
9 point if it was complete.

10 Q. You were told you couldn't review it for privilege
11 concerns, correct?

12 A. Right.

13 Q. But were you ever informed that the investigation team's
14 review of the database was complete?

15 A. I was never informed of that, no.

16 Q. All of the Yahoo! documents are still in the possession,
17 custody and control of the Government, correct?

18 A. I'm assuming so, yes.

19 Q. Can you go to DX 58, please.

20 A. Okay.

21 Q. This is a letter from Mr. Adams' then defense counsel
22 Mr. Hopeman to then United States Attorney Andrew Luger
23 after learning of the Yahoo! seizure, objecting to the
24 seizure and asking for the opportunity to have the documents
25 back and review them for privilege.

1 Were you made aware of this request?

2 A. I don't recall this letter.

3 Q. If you go to 59. This is August 2016. This is
4 Mr. Maria's response declining the request from Mr. Adams'
5 counsel. Were you aware that Mr. Adams' request to review
6 the documents for privilege was declined?

7 A. I'm not aware of that, but I recall today.

8 Q. Have you reviewed the documents since April 7th of 2017?

9 A. I'm trying to remember when my last access was. I think
10 it was in August of -- let me look here -- August of 2017.

11 So yes, I have.

12 Q. And it looks like you've reviewed the documents on three
13 different occasions: on April 27th, 2017; May 16th, 2017;
14 and August 21st, 2017?

15 A. Yes, that looks to be correct.

16 Q. And do you know for about how long you reviewed the
17 documents on those different days?

18 A. I don't.

19 Q. Do you have an estimate? Are we talking under an hour?

20 A. I don't know.

21 MR. WADE: If I could have a moment, Your Honor.

22 THE COURT: Of course.

23 (Defense counsel confer)

24 MR. WADE: We have no further questions at this
25 time, Your Honor.

1 THE COURT: Mr. MacLaughlin.

2 MR. MacLAUGHLIN: Yes.

3 **REDIRECT EXAMINATION**

4 BY MR. MacLAUGHLIN:

5 Q. Inspector Kroells, it seems like it's been quite some
6 time since I've spoken to you.

7 A. Yes, sir.

8 Q. All right. So a lot of stuff was just asked of you.
9 I'm not going to touch on all of it by any means.

10 I want to start out at the beginning of the
11 cross-examination.

12 A. Okay.

13 Q. There are certainly documents that you come across in
14 searching through something like an e-mail database that say
15 "Privileged" on them, correct?

16 A. Yes.

17 Q. And in fact, certain e-mail accounts automatically
18 generate something that says "Privileged"; is that your
19 experience?

20 A. Yes, it is.

21 Q. Does the fact that a document says "Privileged" on it
22 always mean that it's really privileged within the meaning
23 of the actual common-law privilege?

24 A. No, not in my experience.

25 Q. And is that why when you see "Privileged," you don't

1 necessarily just stop in your tracks. You actually think a
2 little bit about what you're looking at.

3 A. Correct.

4 Q. Okay. Mr. Wade kind of had a mantra during the first
5 part of his cross. He kept talking about your standard
6 cautious practice, standard cautious practice. I want to
7 ask you some questions about that.

8 With respect to the e-mails, particularly the 22
9 e-mails that you printed out in March of 2016, you testified
10 on direct that you did employ your usual vigilance for
11 privileged materials when you printed those out, correct?

12 A. Yes.

13 Q. Now, I just want to really put a nail in this.

14 I think I heard you say something on
15 cross-examination like you looked at all privileged
16 documents as long as they had something to do with the
17 fraud, and he was leading and so that's what happens.

18 A. Okay.

19 Q. I want to ask you some open-ended questions about that.

20 A. Okay.

21 Q. So, for example, if you saw an e-mail between Mr. Adams
22 and one of his lawyers where it looked like it might contain
23 a discussion of the fraud or how to meet the allegations,
24 would you look at that document?

25 A. Definitely not.

1 Q. All right. Your conversations with AUSA Maria about
2 what you could look at when you talked to him about the
3 thumb drive, I think there was some confusion about when
4 that was, but in any event, it was before you actually
5 looked at the thumb drive, right?

6 A. Yes.

7 Q. And your concern, correct, was with whether you could
8 look at communications with Apollo, right?

9 A. Yes.

10 Q. And employees of Apollo.

11 A. Yes, that was a specific concern.

12 Q. And employees of Apollo Gemstone.

13 A. Yes.

14 Q. And employees of Private Scio.

15 A. Yes.

16 Q. In short, the people -- the Linareses, the people who
17 were at the receiving end of this case, correct?

18 A. Yes.

19 Q. And what was his advice?

20 A. That I could.

21 Q. Okay. Now, again, these are words that came from good
22 cross-examination, but I want to front them here. He said:
23 So you got permission to look at these privileged documents.
24 AUSA Maria said yes, they're privileged, but you could look
25 at them. Is that what he told you?

1 A. No.

2 Q. He just said -- what was his advice?

3 A. That I could look at them.

4 Q. That you could look at them. Okay.

5 I think you testified on cross that you don't have
6 a whole lot of knowledge about the waiver in this case, is
7 that right?

8 A. That's correct.

9 Q. But you do have a lot of knowledge, do you not, about
10 what happened in the case?

11 A. Yes.

12 Q. Okay.

13 MR. MacLAUGHLIN: Can I get General 1?

14 Your Honor, may I approach the white board again?

15 THE COURT: Yes.

16 Q. So I just want to lay out the relationship -- and I'm
17 not the right guy to be doing this. The right guy to be
18 doing this is sitting over (indicating) here. But we have
19 Apollo Gemstone, right, AGI, right?

20 A. Okay.

21 Q. And that was a company that had investors, true?

22 A. Yes.

23 Q. And this is the company that had this apparently cool
24 technology to make diamonds.

25 A. I think Apollo Diamond is actually the one that had the

1 technology and Gemstone was the one that was selling it or
2 marketing it.

3 Q. Okay. So there's ADI and AGI, right?

4 A. Right.

5 Q. And these two companies went broke, correct?

6 A. Yes.

7 Q. I want to ask you a question. As of the time you went
8 and saw Magistrate Rau, what was the status of these
9 companies?

10 A. They were out of business.

11 Q. They were dead letters, correct?

12 THE COURT: Pause for a moment.

13 MR. WADE: Your Honor, I think this is going to
14 the kind of legal conclusion that the Government had
15 specifically asked that we not inquire about, and so --

16 THE COURT: Which legal conclusion is that?

17 MR. WADE: Maybe counsel for the Government can
18 proffer it to the Court, but I assume he's trying to ask
19 questions about the privilege issue.

20 THE COURT: So as long as he doesn't ask her her
21 opinion about the facts that he's about to elicit from her
22 that I don't know lead to a vitiation of privilege, I'll
23 allow it. That's the line I tried to draw with you, was get
24 what facts were necessary to establish -- so that I can
25 determine whether the privilege exists. If he asks her if

1 this business has gone under, he can do that. If they
2 received specific information as to the significance of
3 that, they can do that. I won't encourage asking about does
4 that mean there is no privilege.

5 MR. WADE: But she's already testified she doesn't
6 know about the waiver, and so we're asking questions about
7 something that she's already offered testimony on, and this
8 is relating to the propriety of the waiver, which is a legal
9 issue that'll be before the Court. The question -- it
10 doesn't relate to her execution of the warrant since she
11 didn't even know that there was waiver.

12 THE COURT: Okay. I will overrule your objection,
13 because I think this line of questions goes to facts that
14 will enable me to determine whether privilege was violated,
15 but I won't give latitude to getting into surmise about the
16 long-term impact on privilege.

17 MR. MacLAUGHLIN: Very good.

18 BY MR. MacLAUGHLIN:

19 Q. Let me ask a question that I just heard from the bench.

20 At the time you went to visit Magistrate Rau, had
21 these two companies gone under?

22 A. Yes.

23 Q. Did they even have any assets left?

24 A. No.

25 Q. Okay. In 2011 -- again, I'm not a calligrapher -- there

1 was another company called Private Scio that was created,
2 right?

3 A. Yes.

4 Q. And that company was created by Mr. Adams right out in
5 the state of Nevada?

6 A. Mr. Adams and Mr. Monahan, yes.

7 Q. Okay. And these companies at some point had assets even
8 though they had failed, essentially, correct?

9 A. Yes.

10 Q. And is it correct then that substantially all of the
11 assets of these two companies in 2011 were sold to Private
12 Scio?

13 A. That was the intent it looked like. They were trying to
14 sell their assets to Private Scio, but Private Scio wasn't
15 able to raise enough money to pay for that, so that was when
16 Public Scio was created to actually buy all the assets.

17 Q. Okay. I don't know how in detail we need to get, but
18 the assets certainly left these companies and they were
19 dead.

20 A. Yes.

21 Q. They went over here to Scio, Scio -- Private/Public
22 Scio. They're over here, right?

23 A. Yes.

24 Q. And did this ENLT, these two entities, have any ongoing
25 business concerns or value after that asset sale?

1 A. No, not to my understanding.

2 THE COURT: Hang on one second.

3 MR. WADE: Objection. Lacks foundation. And
4 again, this all goes to the determination of whether a
5 privilege remains. It doesn't have anything to do with her
6 execution of the search warrant. These are facts --

7 THE COURT: Overruled. I need to understand the
8 factual backdrop in order to decide whether it's relevant.
9 We're here one time. I gave you guys hours. Let him
10 explore this topic briefly so that I can have the record.
11 And I might decide consistent with your suggestion that it
12 is not relevant to my determination of the reasonableness of
13 the execution of the warrant, but I might not, and I'd
14 rather do it while we've got her on the stand.

15 MR. WADE: Fair enough, Your Honor. I would just
16 say there's a lot of evidence that's to the contrary of
17 what's being talked about, and if we end up litigating this
18 issue, the other side should come in as well. I'm not
19 trying to litigate that right now, but a lot of the
20 statements that are being made are not factually accurate.

21 THE COURT: Okay. Thank you.

22 Mr. MacLaughlin, let's keep it short.

23 BY MR. MacLAUGHLIN:

24 Q. Do you -- this is a yes or no. Do you or do you not
25 know anything about the June 2016 waiver of the privilege by

1 this entity (indicating) here?

2 A. I know that there was a waiver in June 2016, or summer
3 of 2016.

4 Q. Let's put it right there.

5 So Mr. Wade asked you quite a few questions about
6 the nature of EdAdams@yahoo.com and whether it was a
7 business account or whether it was a private account,
8 correct?

9 A. Yes.

10 Q. And you have testified and I think you said in your
11 declaration that it was essentially, as far as you knew, a
12 private e-mail account, right?

13 A. Right.

14 Q. You say right in your affidavit that he did business out
15 of that account, didn't you?

16 A. Yes.

17 Q. Okay. Now, Mr. Adams, according to your investigation,
18 is a lawyer, correct?

19 A. Yes.

20 Q. He's also other things, isn't he?

21 A. Yes.

22 Q. He's got other firms?

23 A. Yes.

24 Q. In fact, toward the end of your examination, Mr. Wade
25 was asking you things about, like, ESA. Isn't ESA actually

1 a consulting company of his?

2 A. Yes.

3 Q. And doesn't he have a business involving, what, yogurt
4 or --

5 A. Yes. I can't remember the name, Yogurt Lab or something
6 like that.

7 Q. And he's got an investment banking business?

8 A. He did, yes.

9 Q. Okay. And as the defense has pointed out in its
10 pleadings, a lot of what Mr. Adams did even with respect to
11 these companies wasn't lawyer work, it was functioning as an
12 officer of the company.

13 A. Correct.

14 Q. You didn't hide any of that from Judge Rau.

15 A. No.

16 Q. Now, he also asked you questions about asserted
17 inactivity in the Ed Adams, Adams Monahan account, the
18 e-mail account associated with the law firm.

19 A. Yes.

20 Q. Did you have access to the SEC documents to which our
21 office was granted access?

22 A. Yes.

23 Q. And in looking at those documents, did you notice
24 whether or not there was activity in that account?

25 A. I don't remember specifically. I know that we had --

1 that we were aware of that account.

2 Q. You were aware of that account.

3 A. Yes.

4 Q. Okay. One way or the other -- and it doesn't matter if
5 you know, but I want to know if you know -- do you know if
6 in fact that was a dormant account or if there may have been
7 activity in that account?

8 A. It was my understanding that it was an active account.

9 Q. Okay. And your decision to stay away from it was based
10 on what again?

11 A. Because we thought there would be too much privileged
12 communications in that specific e-mail account and we were
13 trying to be cautious and stay away from as much privileged
14 communications as we could.

15 Q. Would it surprise you if I told you that during your
16 cross-examination, Mr. Rank looked and saw all kinds of
17 activity in that account in the SEC production? Would that
18 surprise you?

19 A. It would not surprise me.

20 Q. The red underlining on Kroells 2, do you still have that
21 up there?

22 MR. MacLAUGHLIN: Do you have the red underlined
23 version of Kroells 2?

24 MR. WADE: And what's good for the goose is good
25 for the gander. If you'd like to mark that copy as an

1 exhibit for the record, I have no objection.

2 MR. MacLAUGHLIN: All right.

3 THE COURT: I'm not sure if we need it or not.

4 Let me take a look at it again. Thank you.

5 MR. MacLAUGHLIN: I like the application of the
6 goose-and-gander law.

7 BY MR. MacLAUGHLIN:

8 Q. Showing you the underlined portion there of Kroells 2,
9 which might become --

10 THE COURT: I would like -- it doesn't have to
11 happen right now, but I would like this to be marked so I
12 don't lose --

13 MR. WADE: We should just mark it and hand it up.
14 No problem, Your Honor.

15 THE COURT: Thank you.

16 BY MR. MacLAUGHLIN:

17 Q. Showing you Kroells 2 and what will become 2-A, I guess,
18 if I do what I did with Kroells 1, you remember that that's
19 language that's different from our standard premises warrant
20 -- search warrant addendum, correct?

21 A. Yes.

22 Q. Based on the totality of your interactions with AUSA
23 Kokkinen, your review of this thing, your recent search of
24 your e-mails that you got from Kokkinen, where do you think
25 that language came from?

1 A. This actual language in this actual document?

2 Q. Yes.

3 A. I think it came from the -- or the actual document
4 itself?

5 Q. Where did this extra language come from? Who added it?

6 A. I would say probably the judge added it --

7 MR. WADE: Objection. Lacks foundation.

8 A. -- because the first one without that language was from
9 the U.S. Attorney's Office.

10 THE COURT: Okay. Let's lay some foundation for
11 whether she knows who added it.

12 MR. MacLAUGHLIN: Okay.

13 BY MR. MacLAUGHLIN:

14 Q. So you've seen Kroells 1.

15 A. I have.

16 Q. And Kroells 1 is our general search warrant addendum
17 that we attach to premises warrants.

18 A. Right.

19 Q. And you indeed do have experience with that because
20 you've executed premises warrants before.

21 A. Yes.

22 Q. And I think the judge kind of wanted us to stay away
23 from this, but this particular language fits that situation
24 where you're taking something away from somebody and they
25 don't have it anymore, right?

1 A. Yes.

2 Q. Okay. Did you look in your e-mails from
3 Mr. Kokkinen -- let me back up and ask this:

4 Did Mr. Kokkinen send you a final package to bring
5 to Magistrate Judge Mayeron?

6 A. He did.

7 Q. And did you review that final package preparatory to
8 your testimony here?

9 A. I did.

10 Q. Did you specifically check it for this addendum?

11 A. I did.

12 Q. And was it in there?

13 A. No.

14 Q. When you walked out of Magistrate Mayeron's office after
15 you signed the warrant, did you -- was this part of what you
16 had in your hand?

17 A. Yes.

18 Q. And is this language in red nowhere to be found in
19 Kroells 1?

20 A. Correct.

21 Q. I mean, I'm kind of making an argument, I guess, but
22 based on all of that, where did this language come from?

23 MR. WADE: Objection. Lacks foundation. She
24 doesn't know.

25 THE COURT: She knows where it didn't come from,

1 which is the U.S. Attorney's Office. The record is clear
2 that she didn't -- or as clear as we can get -- that it
3 wasn't provided by the Government and wasn't in the packet
4 taken to the judge, but it was in the package that was
5 brought out of the judge's chambers, right?

6 Okay. I don't need her to answer that question.

7 MR. MacLAUGHLIN: Okay. Very good.

8 BY MR. MacLAUGHLIN:

9 Q. Now, there were a series of questions asked of you on
10 cross about you knew Mr. Adams was a lawyer, right?

11 A. Yes.

12 Q. You knew Mr. Monahan was a lawyer.

13 A. Yes.

14 Q. Apparently Mr. Maddox is a lawyer.

15 A. Yes.

16 Q. Mr. Mumm is a lawyer.

17 A. Yes.

18 Q. There's a Sankowitz. He's a lawyer.

19 A. Yes.

20 Q. And these lawyers apparently employ assistants, people
21 like Sandy Ward and Josh Riley, right?

22 A. Yes.

23 Q. Okay. In your experience, are you allowed to
24 investigate lawyers when they themselves commit crimes?

25 A. Yes.

1 Q. Is there anything about one's holding of a bar ticket
2 that prevents you from conducting searches to find out what
3 lawyers are saying to themselves or to other people to
4 commit a crime?

5 A. No.

6 Q. I want to talk about the 22 e-mails.

7 A. Okay.

8 Q. Mr. Wade properly asked you if you remembered what the
9 search terms that you used were to generate those e-mails,
10 right?

11 A. Yes.

12 Q. And unfortunately, you know, we have all kinds of search
13 terms in the case that we've provided, but they're all from
14 Relativity.

15 A. Yes.

16 Q. And you did the searching of the thumb drive before the
17 documents were loaded into Relativity.

18 A. Yes.

19 Q. Okay. So let me ask you not what the search terms that
20 you used were, but were the search terms you used, as far as
21 you can recollect and in your experience, the same kind of
22 search terms that we see that you used when you got the
23 database back in Relativity?

24 A. They would have been similar, yes.

25 Q. Do you remember anything unusual outside of your normal

1 searching protocols that are reflected in all of the data
2 we've turned over that were different in your searching for
3 these 22?

4 A. No.

5 Q. Now, he asked you and I think you've acknowledged that
6 on the thumb drive you saw documents that were outside of
7 the scope of the warrant.

8 A. Yes.

9 Q. Now, a good deal of Mr. Wade's cross-examination of you
10 dealt with the fact -- and I think it is a fact -- that you
11 weren't actively seeking to screen out irrelevant documents,
12 right?

13 A. Right.

14 Q. Okay. It's like the MPIRG negative check-off, right?
15 Instead of approaching this project by we want to identify
16 what's not relevant and pull it out -- and I think this has
17 been answered during this hearing many times, but let's
18 answer it again -- what was your approach?

19 A. My approach was to try to find documents that were
20 relevant and pull those out.

21 Q. Okay. So there's two ways to skin a cat and one of them
22 is more efficient than the other, right?

23 A. Right.

24 Q. Okay. So Mr. Wade asked you at the end, in March,
25 April of 2017, we've seen the e-mail from Mr. Maria where

1 there's the final relevance terms that he lays out, right?

2 A. Yes.

3 Q. It's that February 28th letter --

4 A. Okay.

5 Q. -- okay? And Mr. Wade asked you on cross were you
6 involved in putting those terms together, and I think you
7 answered the question no.

8 A. I don't remember.

9 Q. Okay. You don't remember. Okay. Fair enough, but I
10 want to ask you this question:

11 That was the *coup de gras*, right? That final
12 relevant search was the result of the collective work of
13 your prosecution team that had been going on since May 4th
14 of 2016, right?

15 A. The concept of it --

16 MR. WADE: Objection. Lacks foundation. She's
17 testified essentially she had no involvement in that search,
18 in the preparation of that search.

19 THE COURT: The testimony is that she doesn't
20 remember how it came to be. I'm not going to let us go
21 further down as to what might have been.

22 Q. Okay. But I want to be specific about what you do and
23 don't remember, because this is important.

24 My understanding of your testimony on cross is
25 that you don't specifically remember on February 28th of

1 2016, when David Maria put that letter together saying
2 search for these documents, you don't remember being
3 involved in that.

4 A. That's correct.

5 MR. WADE: I'd object to the form of these
6 questions in light of how it's recharacterizing the
7 testimony that was offered on cross.

8 THE COURT: Overruled so far.

9 Q. Okay. Here's my question, though:

10 Even if you weren't involved in putting that
11 letter together --

12 A. Right.

13 Q. Even if you weren't involved in the actual formal
14 process of putting pen to paper to get it to our ALS people,
15 in general, you were involved in searching this database,
16 right?

17 A. Yes.

18 Q. When you found things that were relevant, did you bring
19 them to the attention of the prosecution team?

20 A. Of course.

21 Q. And did you bring them to Mr. Maria's attention?

22 A. Yes, I did.

23 Q. Did you bring them to Special Agent Khan's attention?

24 A. Yes.

25 Q. Belich's attention?

1 A. Yes.

2 Q. So there is a group of people learning together here,
3 right?

4 A. Right.

5 Q. And at the end of the day, even if you weren't involved
6 in it, that letter, that e-mail that David Maria sent for
7 the final relevant violence culling, does that not represent
8 the collective wisdom of the group based on your --

9 THE COURT: Sustained.

10 MR. MacLAUGHLIN: What?

11 THE COURT: You can stop at that question.

12 Everything else was fine. Now asking her to opine what it
13 must have been goes beyond her knowledge.

14 MR. MacLAUGHLIN: Okay.

15 THE COURT: You can make that argument based on
16 the record you've developed. It's the
17 asking-one-question-too-many problem.

18 MR. MacLAUGHLIN: Okay. Right.

19 BY MR. MacLAUGHLIN:

20 Q. A lot of input went into that letter from the
21 prosecution team.

22 MR. WADE: Objection.

23 THE COURT: Let's move on. I think the record is
24 pretty developed on this point.

25 MR. MacLAUGHLIN: Okay.

1 BY MR. MacLAUGHLIN:

2 Q. Now, during your cross-examination, Mr. Wade mentioned
3 that he wants a log of the e-mails that were shown to
4 witnesses. Do you remember that?

5 A. I do.

6 Q. And I don't remember what you know about this or not,
7 but are you aware that the e-mails that were shown to
8 witnesses, that we've agreed to turn those over and we've
9 already turned some of them over?

10 A. I don't know.

11 Q. Okay. I'll stay away from that then.

12 MR. WADE: Your Honor, just to be clear, I was
13 asking -- what we talked about was a log of the interviews
14 that were occurred --

15 THE COURT: So that you can infer the searches
16 that might have been done.

17 MR. WADE: Yes.

18 MR. MacLAUGHLIN: I think that's outside her area
19 of knowledge. We can address that separately.

20 THE COURT: Okay.

21 BY MR. MacLAUGHLIN:

22 Q. Straight up: After you gave the thumb drive to Special
23 Agent Khan, did you do any more searching on this thumb
24 drive?

25 A. As soon as AUSA Maria told us that there needed to be a

1 heightened filtered process, no, I did not do any more
2 searching.

3 Q. Okay. Let's talk a little bit about Mr. Hopeman and
4 this Arnstein firm that were the subject matters of your
5 e-mail about, hey, I'm seeing extra stuff, okay?

6 A. Okay.

7 Q. You swore this thing out on January 8th of 2016 in front
8 of Magistrate Judge Rau.

9 A. January 7th, I believe.

10 Q. January 7th of 2016. Okay. So were you expecting any
11 e-mails to be produced by Yahoo! after that date?

12 A. No.

13 Q. Okay. And it was brought out on cross, I think
14 accurately, that you as part of the prosecution team met
15 with Mr. Hopeman in March of 2016?

16 A. That's correct.

17 Q. Did you have any reason to know or to believe that he
18 had been involved in representing Mr. Adams during the
19 period of time when Yahoo! was required to cough up these
20 e-mails?

21 A. At that time, no.

22 Q. Same question with respect to Mr. Petrosinelli.

23 A. I don't know. I don't know when -- was he the SEC
24 attorney for Mr. Adams?

25 Q. Yeah.

1 A. If it was, then I don't know when that started.

2 Q. All right. Now, there was a line of questions that
3 Mr. Wade asked you about the focus of your affidavit
4 compared to what ended up in the indictment, and I think for
5 the most part the judge is going to look at that as a matter
6 of law, okay?

7 A. Okay.

8 Q. But I want to ask you the question:

9 So the main focus of your affidavit, or one of the
10 main focuses of your affidavit was the transaction when the
11 assets were sold to Private Scio, correct?

12 A. Correct.

13 Q. But your affidavit talks at length, does it not, about
14 Apollo? I mean, it talks at least some about Apollo
15 Diamond?

16 A. It does.

17 MR. WADE: Your Honor --

18 THE COURT: I'm going to apply the
19 goose-and-gander rule here. I can read the differences
20 between the affidavit and the indictment. If there are
21 things that are in one or the other that factually I don't
22 understand, those would be perfect for this line of
23 questioning, but the comparing of side by side is something
24 I'm going to do.

25 Q. Let me focus on that then.

1 So in a fraud case, including the fraud case that
2 you described in your affidavit --

3 A. Yes.

4 Q. -- is one of the elements you have to prove and
5 investigate an attempt to defraud?

6 A. Yes.

7 Q. And so if mistakes were made accidentally, innocently,
8 that's not a violation of 1341 or 1343, correct?

9 A. That's my understanding.

10 Q. And so your affidavit says that this --

11 MR. WADE: Your Honor, goose/gander. This doesn't
12 relate to facts. He's asking about elements in an offense.

13 THE COURT: Sustained.

14 Q. Okay. Did it turn out in your investigation, though,
15 that what happened with Apollo Diamond, what happened with
16 Apollo Gemstone, provided context for and motivation for
17 what you described in your affidavit with respect to Private
18 Scio?

19 A. Most definitely. It was all related.

20 Q. Okay. Moreover, in your -- in the attachment that we've
21 been looking at -- and I'm going to direct your attention to
22 DX 8, page 78 and 79, Magistrate Rau authorized you to go
23 all the way back to 2006 in looking for evidence, correct?

24 A. That's correct.

25 Q. And notwithstanding the fact that the Private Scio

1 transaction happened in 2011.

2 A. Correct.

3 Q. And in support of that, you provided him with
4 information about things that had been going on for years
5 with all of these entities.

6 A. Correct.

7 Q. And so my question is:

8 In executing this warrant, did you look for
9 anything other than evidence of mail and wire fraud
10 occurring on or after October 25th, 2016 and involving
11 Mr. Adams?

12 A. No, I did not.

13 Q. One other question about that document.

14 Did you ask for and did Mr. -- and did Judge Rau
15 provide you with permission -- and I'm going back now to
16 page 88. Did he authorize you to grab tax records of ADI,
17 ADGC, Private Scio, Public Scio, and an entity called Focus?

18 A. Page 78, and yes.

19 Q. So even though you didn't talk about a Title 26 offense
20 in your affidavit, the -- Section 2 of Part B authorized you
21 to grab tax records and financial documents showing income
22 of these entities for the fiscal years it was in existence.

23 A. Yes.

24 MR. WADE: Your Honor, I'd move to strike that
25 last answer. To the extent that she's offering the opinion

1 as to whether something's covered by the warrant, I think at
2 side bar we came to the view that that's not appropriate.

3 THE COURT: I'm going to overrule that, because
4 it's my understanding the testimony she gave, that she was
5 saying what the warrant stated, which is sort of
6 unnecessary, but not an opinion as to whether it is covered
7 or not.

8 MR. WADE: So she just read a portion of the
9 warrant?

10 THE COURT: That's the way I understand.

11 MR. WADE: No objection to her reading the
12 warrant, Your Honor.

13 MR. MacLAUGHLIN: I have nothing else.

14 THE COURT: Thank you.

15 Recross?

16 MR. WADE: Your Honor, I will be very brief.

17 For the Court's benefit, I won't ask the
18 witness -- I won't delve into a sublitigation of the lower
19 half of the grease board.

20 I will just note for the Court's attention that
21 the asset purchase agreements, not the merger agreements, of
22 the relevant entities are marked at DX 55 and DX 56, and so
23 those are before the Court.

24

25

RECROSS-EXAMINATION

BY MR. WADE:

Q. Inspector Kroells, you were aware that Mr. Adams and counsel for Mr. Adams were asserting privileges on behalf of Apollo and Scio entities in the spring of 2016, correct?

A. I don't recall whether I was aware of that or not.

Q. Could you turn to DX 65. This is a letter from Mr. Hopeman, correct?

A. It appears to be, yes.

Q. And it attaches a privilege log, correct?

A. It looks like it.

Q. And the privilege log asserts privileges on behalf of the Apollo companies and on behalf of the Scio companies, correct?

A. I don't know. I don't understand what this all means, the privilege log and all that.

Q. When you look at Bates label DSM 743, do you see the name Apollo Diamond?

THE COURT: Pause, please. Yes.

MR. MacLAUGHLIN: May I just briefly voir dire the witness? Three questions?

THE COURT: Why don't -- no.

MR. MacLAUGHLIN: Okay.

THE COURT: Why don't you ask her if she's aware of the information contained in this letter, because if

1 she's not, I'm not going to have her read it out loud.

2 MR. WADE: Fair point.

3 BY MR. WADE:

4 Q. Were you advised in May of 2016 by AUSA Maria that
5 privileges were being asserted on behalf of Apollo?

6 A. I don't recall.

7 Q. We talked about your knowledge of the SEC files as well.
8 Do you recall that?

9 A. Yes.

10 Q. Okay. Could you go to DX 62. This is a letter -- I'll
11 just represent -- do you recall whether you saw this letter?

12 A. I don't recall this letter.

13 Q. Okay. Do you recall learning or being told that counsel
14 for Mr. Adams was asserting legal privileges on behalf of
15 Apollo and Scio companies in 2015?

16 A. I don't recall that, no.

17 Q. Okay. Did you read Mr. Adams' SEC testimony? I believe
18 you testified that you did, correct?

19 A. I did. If it's in there, I don't remember reading that
20 part.

21 Q. Are you aware that there were several instances within
22 that testimony in which Mr. Adams didn't answer questions
23 because they called for privileged information relating to
24 Apollo and Scio companies?

25 A. I don't remember.

1 Q. You don't remember reading that?

2 A. I'm not saying it's not there. I just don't remember as
3 I sit here today. There was two depositions and they're
4 quite lengthy.

5 MR. WADE: I have no further questions, Your
6 Honor.

7 THE COURT: Thank you. I have a couple questions.

8 **E X A M I N A T I O N**

9 BY THE COURT:

10 Q. In your review of documents throughout this time, did
11 you see use of ESA not referring to the business?

12 A. Not referring to what business?

13 Q. So -- I'm sorry. It's my understanding that ESA is a
14 consulting company.

15 A. Yes.

16 Q. And the initials are also, we believe, Mr. Adams'
17 initials.

18 A. Yes.

19 Q. Did you see ESA used as personal initials in personal
20 correspondence and as a way of signing off on things or
21 otherwise referring to himself, not the business?

22 A. I don't remember that. I don't remember if I did or I
23 didn't.

24 Q. How about MSM?

25 A. MRM, Mr. Monahan's initials?

1 Q. I'm sorry. Yes.

2 A. I don't remember if I saw him signing off using those
3 initials in e-mails or not.

4 Q. Is MRM a business?

5 A. MRM Consulting is a business. Both companies received
6 funds from the Apollo/Scio companies.

7 Q. You indicate that you encountered -- this is way back
8 when, so I apologize, but that you encountered documents
9 that were potentially outside the scope of the warrant. You
10 would pull the documents if they were relevant, but if they
11 weren't relevant, you would move on and you would note them
12 so that you could tell them to the AUSA about maybe not
13 being relevant. Is that generally right in your careful
14 practice?

15 A. So if there's something outside of the warrant, I was
16 not interested in that. I was trying to find documents
17 within the scope of the warrant. And if it's something that
18 I think is relevant to the warrant and to the fraud scheme,
19 that I would pull out. Does that answer your question?

20 Q. I thought that you testified that you would provide
21 information to the prosecutor -- and this is not with
22 respect to privilege, but relevance -- for documents that
23 you thought might not be relevant.

24 A. I remember having a conversation regarding the fact that
25 I was seeing potentially irrelevant e-mails within the

1 e-mail database. I don't remember specifics. I think that
2 I kind of wrote myself a list to try to stay away from those
3 companies when I was reviewing e-mails.

4 Q. And this was exactly my question. Do you believe that
5 the list, if you remember, which you probably don't, was
6 based on document number or just categories, like broad
7 strokes?

8 A. Just broad strokes.

9 Q. You're unaware of what records may or may not have been
10 kept by the Mozilla application on the computer.

11 A. Correct. After AUSA Maria told me to stop reviewing any
12 e-mails, I didn't even look in that computer again, or in
13 that application.

14 Q. After the final cull was made and the documents were
15 reduced to 42,000-something, you accessed the database only
16 three more times?

17 A. It looks like that, yes.

18 Q. So most of your review of this database was done prior
19 to the cull.

20 A. Yes.

21 Q. Are you aware of when Mr. Hopeman began representing
22 Mr. Adams?

23 A. I'm trying to think.

24 Q. If not, that's okay.

25 A. I don't remember a specific date.

1 Q. Do you remember whether you understood that Mr. Hopeman
2 represented Mr. Adams during the time frame covered by the
3 warrant?

4 A. You know, I don't know that he did because I don't know
5 that Mr. Adams would have been aware of the criminal
6 investigation at that time.

7 Q. Okay.

8 THE COURT: Those are my questions.

9 I'll start with you, Mr. Wade. Any questions
10 you'd like to ask created by my opening of doors?

11 MR. WADE: No, Your Honor.

12 THE COURT: Okay. Mr. MacLaughlin?

13 MR. MacLAUGHLIN: No, Your Honor.

14 THE COURT: Okay. Can I call it? We are at an
15 end. You may step down. Thank you.

16 THE WITNESS: Thank you, Your Honor.

17 THE COURT: It is ten after 4:00. Let's think
18 about next steps. I think we have three more witnesses.

19 Do we need a break, Tim?

20 (Discussion off the record between the Court and the
21 court reporter)

22 THE COURT: Okay. We're going to go off the
23 record.

24 (Recess taken at 4:10 p.m.)

25 * * * *

1 (4:17 p.m.)

2 IN OPEN COURT

3 (Defendant present at podium with counsel)

4 THE COURT: All right. We are back on the record
5 for the continuation of our motion hearing, but before we
6 move further with testimony, we are going to do the
7 arraignment for Mr. Adams on the superseding indictment.

8 Mr. Adams, a superseding indictment has been
9 returned against you by the grand jury. Have you received a
10 copy of that indictment?

11 THE DEFENDANT: I have.

12 THE COURT: Would you like me to read it out loud
13 to you, or do you waive the reading of the indictment?

14 THE DEFENDANT: I waive the reading of the
15 indictment.

16 THE COURT: Okay. And how do you plead to the
17 charges against you in the superseding indictment?

18 THE DEFENDANT: Not guilty.

19 THE COURT: Not guilty pleas will be entered on
20 your behalf as to all of the allegations in the superseding
21 indictment. I do not yet have a schedule for next steps.
22 Usually an arraignment triggers some new deadlines related
23 to the filing of motions. I think that that's one of the
24 things we're going to discuss tomorrow at the conclusion of
25 testimony is what would be an appropriate next-step

1 schedule, so you'll get those dates once we nail those down.

2 Mr. MacLaughlin, anything further with respect to
3 the arraignment?

4 MR. MacLAUGHLIN: No, Your Honor. Thank you.

5 THE COURT: Anything in your estimation, sir, on
6 behalf of Mr. Adams?

7 MR. WADE: No, Your Honor. Thank you.

8 THE COURT: Okay. Thank you, sir. You can be
9 seated.

10 All right. On that note, I think we're going to
11 take witnesses slightly out of order so we can accommodate a
12 travel schedule. If the Government could call its next
13 witness, please.

14 MR. MacLAUGHLIN: At this time the United States
15 calls Brandon Belich.

16 THE COURT: Come on up, sir.

17 **BRANDON BELICH, GOVERNMENT'S WITNESS, SWORN**

18 THE COURT: Thank you. You can be seated.

19 Please state your full name and spell your last
20 name for the record, sir.

21 THE WITNESS: Brandon Belich, B-E-L-I-C-H.

22 THE COURT: You can proceed, Mr. MacLaughlin.

23 Are you ready over there? Okay.

24 Go ahead, Mr. MacLaughlin.

25 MR. MacLAUGHLIN: Thank you.

DIRECT EXAMINATION

BY MR. MacLAUGHLIN:

Q. So we're going to try to get through this quickly.

Mr. Belich, you are presently a Deputy United States Marshal, correct?

A. That's correct.

Q. But for a period of time you were a Special Agent with the Internal Revenue Service Criminal Investigation Division.

A. Correct.

Q. What years did you have that job?

A. From 2003 through February of 2017.

Q. So 13-plus years.

A. Yes, sir.

Q. And your last duty station was up in Duluth, Minnesota, correct?

A. Correct.

Q. All right. In the course of your 13-plus years as a Special Agent with the IRS, did you have experience executing search warrants?

A. Yes, I did.

Q. Have you executed premises warrants?

A. Yes.

Q. And have you executed or been involved in the execution of e-mail search warrants?

1 A. Yes, I have.

2 Q. At some point were you brought into this case?

3 A. Yes, I was.

4 Q. And when were you brought in?

5 A. I believe it was in the summer of 2014.

6 Q. And why were you brought in?

7 A. I was called by the U.S. Attorney's Office to assist
8 with the investigation.

9 Q. Okay. Generally, you were investigating matters under
10 Title 26, correct?

11 A. Correct, as well as Title 18 violations as well.

12 Q. Okay. So let's just put a little emphasis on that.

13 Your agency has jurisdiction to investigate money
14 laundering, correct?

15 A. Correct.

16 Q. So that would be Section 1956, concealment and promotion
17 money laundering?

18 A. Yes.

19 Q. 1957, engaging in monetary transactions in criminally
20 derived property?

21 A. Correct.

22 Q. All right. And so is it usual or unusual for you to get
23 involved in a fraud case?

24 A. Very common.

25 Q. Okay. Now, in this particular case, at the end of 2015

1 or in early 2016, a search warrant was obtained by your
2 prosecution team for two e-mails of Mr. Adams', is that
3 correct?

4 A. That's correct.

5 Q. My first question is: What was the nature of those
6 accounts? What kind of e-mail accounts were they?

7 A. They were personal e-mail accounts.

8 Q. Were you aware as a member of the prosecution team that
9 there was also an e-mail account that Mr. Adams had in
10 connection with his law firm, a firm called Adams Monahan,
11 LLC?

12 A. Yes.

13 Q. Were you involved in discussions or a witness to
14 discussions about why you didn't go and do a search warrant
15 for that Adams Monahan, LLC e-mail account?

16 A. I don't recall specific discussions as to why we did or
17 didn't -- you know, or why we didn't include the law firm
18 e-mail accounts, but I'm sure I would have been possibly
19 present at some meetings in which we discussed that.

20 Q. You don't remember what was said about that topic.

21 A. I don't specifically recall that, no.

22 Q. Okay. Now, when you were trained as a Special Agent,
23 you do that at a place called FLETC, right?

24 A. Correct.

25 Q. And that stands for Federal Law Enforcement Training

1 Center, and it's in Georgia.

2 A. Correct.

3 Q. There or elsewhere, did you get any training, or from
4 our office, for that matter, about how to spot
5 attorney-client privilege communications?

6 A. Yes.

7 Q. Tell us about that training.

8 A. Received training at the Federal Law Enforcement
9 Training Center, and, yeah, they educate us as to what the
10 attorney-client privilege is and to know that -- what to
11 watch for as far as communications, correspondence that may
12 be with attorneys.

13 Q. Okay. So how do you spot -- in your experience as an
14 agent, how do you spot documents that might be privileged?

15 A. Quite often it would be just looking at the letterhead
16 of a letter or of an envelope. You know, usually law firms
17 are unique in the way they're titled.

18 Q. And if you see something, for example, an e-mail that
19 was seized pursuant to warrant, if you see something that
20 you think might be privileged, tell the Court what your
21 procedure is.

22 A. I would immediately stop reviewing it, set it aside and
23 notify -- if a taint team has been identified, I would
24 notify the member of the taint team or notify the
25 prosecutor, the AUSA assigned to the case, and immediately

1 stop -- you know, cease reviewing it or cease looking at it.

2 Q. Now, in this particular case, did you ever have
3 possession of the thumb drive? We've been talking a lot
4 about a thumb drive that came in on March 7th of 2016. You
5 didn't have access to that, right?

6 A. No, I did not.

7 Q. Did you ever touch it?

8 A. Not that I know of.

9 Q. Okay. So is it fair to say then that the first time you
10 had access to anything that came in from Yahoo! was in May
11 of 2016 when for the first time that database was made
12 available to the prosecution team?

13 A. That would have been the earliest date, and at that
14 point I don't think I had my remote access available, so it
15 would have been -- I'm not exactly sure if it would have
16 been a month or so after that when I was finally able to
17 access it.

18 Q. Okay. Now, the e-mails were loaded into a program
19 called Relativity, correct?

20 A. Correct.

21 Q. You were up in Duluth?

22 A. Correct.

23 Q. How did that program function for you up there?

24 A. The connection issues that I had were very poor, so I
25 wasn't able to review. I think when I tried to pull up an

1 e-mail, it actually took like three to five minutes just for
2 an e-mail to pop up on the screen. And so if I were to try
3 and click down and look through an inbox, it would take five
4 minutes for each one to open up.

5 THE COURT: That would be maddening.

6 THE WITNESS: Mm-hm, it would.

7 Q. And the maddening quality of it is reflected in
8 Belich 1, and I'm hoping it's in front of you, but it might
9 not be. Do you have a document up there called Belich 1?

10 MR. MacLAUGHLIN: And if not, may I approach?

11 A. I do.

12 Q. You do. Okay. So when you were doing -- when you
13 accessed Relativity, did you know that whatever you did in
14 Relativity was logged and could be recalled later what you
15 did?

16 A. Yes.

17 Q. So it looks like you only searched for one thing and
18 that's "Rothman." Is that the only search you conducted in
19 this database?

20 A. That I can recall, yes.

21 Q. Okay. And who's Rothman? What is Rothman?

22 A. There were two investors with the last name Rothman. I
23 can't recall if they were brothers or cousins. And I
24 interviewed both of them I think in approximately July of
25 2016. So I'm sure in connection with me interviewing the

1 witnesses I conducted a search looking for what e-mails
2 might have involved them.

3 Q. Okay. Now, we've been doing a lot of talking about the
4 warrant in this case and the attachment to the warrant. Did
5 you look at the search warrant when it was issued?

6 A. Yes.

7 Q. Okay. And you knew it had an attachment to it,
8 Attachment B?

9 A. Yes.

10 Q. And did you read Attachment B before you started looking
11 around in this e-mail database?

12 A. Yes, I would have reviewed that.

13 Q. Was this search for Rothman intended to identify
14 documents that were within the scope of Section 2 of
15 Attachment B to the warrant?

16 A. Yes.

17 Q. All right. Now, when you first got involved in the
18 case -- give me the date again. When did you sign up for
19 the case, if "signing up" is the right term?

20 A. I believe it was in the -- maybe August or September of
21 2014, I believe.

22 Q. So that's long before the search warrant was even
23 executed.

24 A. Yes.

25 Q. What did you understand -- I'm going to approach this

1 board over here.

2 MR. MacLAUGHLIN: If that's okay, Your Honor?

3 THE COURT: Yes, of course.

4 Q. So the thumb drive comes in on March 7th and you don't
5 touch the thumb drive, right?

6 A. Correct.

7 Q. You get access to it in early May of 2016.

8 A. Either then or later.

9 Q. What was your understanding about what was going during
10 the period of time between when that thumb drive came in and
11 when you were granted access to it?

12 A. The U.S. Attorney's Office set up a process of doing a
13 mechanical filtering to search for correspondence, any
14 potential correspondence with law firms, anything that may
15 be potentially privileged, so I think we set it up with some
16 of the law firms I think that we were aware of that were
17 involved in other civil actions with Mr. Adams. So it was
18 to identify any of that correspondence and remove it from
19 what we would have.

20 Q. Okay. So I'm inferring from that answer that you and
21 the prosecution team were aware of other matters related to
22 facts that give rise to the indictment.

23 A. That's correct.

24 Q. Were you aware of the SEC investigation?

25 A. Yes.

1 Q. And some other lawsuits brought by angry investors.

2 A. Yes.

3 Q. I'd like to -- do you have Kroells 3 up there? Did she
4 leave her exhibits?

5 A. Yes, I do.

6 Q. So let's just quickly glance at Kroells 3. This is an
7 e-mail from David Maria dated April 27th of 2016 and you're
8 on it, correct?

9 A. That's correct.

10 Q. And this is just before the database was made available
11 in early May of 2016.

12 A. That's correct.

13 Q. And David Maria writes:

14 We have run search terms on the e-mail database to
15 segregate potentially privileged documents and we're still
16 working on that. Does everybody have access to Relativity?

17 What did this e-mail tell you?

18 A. That they ran the mechanical filtering process that I
19 was describing in an attempt to segregate potentially
20 privileged documents.

21 Q. Okay. Now, was the mind -- was your -- forget about
22 mindset. We're going to skip mindset.

23 The discussions between members of the prosecution
24 team, was that discussion that we ran the filter terms so we
25 got nothing to worry about?

1 A. No, absolutely not. We would still proceed with your
2 normal amount of caution on making sure if you do come
3 across anything that looks like it may be potentially
4 attorney-client privilege, that you would take the normal
5 precautions in setting that aside and notifying the
6 prosecutor.

7 Q. Let me show you the second page then of Kroells 3, and
8 at the bottom there's an e-mail: "To All."

9 Do you see that?

10 A. Yes.

11 Q. Were you one of the members of the "all"? Did you get
12 this e-mail?

13 A. Yes, I did.

14 Q. And here he says: The e-mail database is up and ready
15 for review in Relativity.

16 That's the database we've been talking about?

17 A. Yes.

18 Q. Per our searches, the potentially privileged docs have
19 been pulled and stored in a separate database which should
20 not show up on your Relativity screens.

21 Was that your understanding?

22 A. That's correct.

23 Q. And he says:

24 That being said, if you identify other law firms
25 or lawyers in your review of the database with whom any of

1 our folks appear to have an attorney-client relationship,
2 make sure to flag them.

3 My question is: As you went forward, did you
4 follow this advice?

5 A. Yes, absolutely.

6 Q. Even though you did very minimal searching.

7 A. Correct.

8 Q. And were you aware, Dep. Marshal Belich, that in fact
9 Christi Kroells, Christine Kroells, did spot some additional
10 attorney-client communications that weren't picked up by the
11 filtering process?

12 A. Yes.

13 Q. And just directing your attention to Kroells 5, is this
14 her e-mail -- you're on it -- to David Maria explaining that
15 there appear to be additional privileged hits in the
16 database?

17 A. Yes, that's correct.

18 Q. Okay. And "Felhaber" is one of the additional search
19 terms proposed here, correct?

20 A. Yes.

21 Q. Do you happen to remember when Jon Hopeman came on board
22 in this case?

23 A. I do.

24 Q. When was that? Do you know when he came on board?

25 A. I don't know.

1 Q. Now, as a result of your not having any good access to
2 the Relativity database, you have reported in your
3 declaration that you actually received some of the
4 underlying Yahoo! e-mails from other members of the
5 prosecution team, right?

6 A. Correct. There was two case agents that were working in
7 the metro that had more access.

8 Q. And in the last week or so, I've asked you to take a
9 good hard look and figure out what e-mails those were.

10 A. Correct.

11 Q. And did you do that?

12 A. Yes.

13 Q. And who were they actually from?

14 A. I received e-mails from both Christi Kroells, as well as
15 from David Maria.

16 Q. And did you package up those e-mails and send them to
17 the leader of the taint team, Ann Bildtsen?

18 A. Yes, I did.

19 Q. Did you do that electronically and by snail mail?

20 A. Yes.

21 MR. MacLAUGHLIN: May I have a moment, Your Honor?

22 THE COURT: Yes.

23 (Government counsel confer)

24 MR. MacLAUGHLIN: I do have some additional
25 questions.

1 BY MR. MacLAUGHLIN:

2 Q. So when you first got involved in this case in 2014, I
3 want to direct your attention back to your first
4 involvement.

5 What were you going to develop in the case? What
6 was your initial role in terms of developing charges?

7 A. As far as what types of charges we were focused on?

8 Q. Yes.

9 A. As the IRS agent, I guess my charge that I would have
10 been bringing to the table would have been a money
11 laundering charge. At that point that was the focus. We
12 were focused on the fraud aspect of the case.

13 Q. Okay.

14 A. Usually when we do get involved in cases like that,
15 we're still aware of the potential for tax charges. If we
16 see that evidence supports that, then we would pursue that
17 down the road.

18 Q. But in this particular case when you got involved
19 initially, it was to develop money laundering charges
20 arising out of the fraud, is that fair?

21 A. Correct, yes.

22 Q. And as I understand it, quite a bit of time went by when
23 you were working on solely on Title 18 offenses here, is
24 that true?

25 A. That's true.

1 Q. Do you remember, do you have a time frame for when this
2 matter became a tax matter or when the prosecution team
3 decided to look at tax charges?

4 A. It was submitted to DOJ Tax in the fall of 2016.

5 Q. Okay. So let's talk just a little bit about that,
6 because Judge Menendez might know about this and might not.

7 Whereas, the United States Attorney's Office can
8 initiate an investigation under Title 18 on its own
9 authority, is that true of tax offenses?

10 A. No. You need approval -- from my understanding, you
11 need approval from DOJ Tax.

12 Q. Okay. So DOJ Tax in Washington, D.C., exercises very
13 careful control over when and under what circumstances we
14 can investigate or charge Title 26 offenses, correct?

15 A. Correct.

16 Q. In this particular case, you said that DOJ weighed in
17 and granted permission to conduct a grand jury tax
18 investigation in the fall of 2016, is that correct?

19 A. That's correct.

20 Q. My colleague Mr. Rank has given me a note that says that
21 that permission -- that the grand jury request to DOJ --
22 which would have come from our office, correct?

23 A. Correct.

24 Q. You write a letter and we sign and send it out
25 essentially is what happens, right?

1 A. Correct.

2 Q. That letter went out there on November 8th of 2016,
3 correct?

4 A. Correct.

5 THE COURT: Just pause.

6 MS. MAIER: Your Honor, he's testifying now about
7 documents that have not been provided to defense counsel in
8 connection with this hearing.

9 THE COURT: True?

10 MR. MacLAUGHLIN: I think that is true, yes.

11 THE COURT: Okay. Then let's leave behind this
12 territory of testimony.

13 MR. MacLAUGHLIN: Okay.

14 BY MR. MacLAUGHLIN:

15 Q. Suffice it to say that it wasn't until the fall of 2016
16 that we even got permission to go forward with the tax case.

17 A. Correct.

18 MR. MacLAUGHLIN: May I have another moment, Your
19 Honor?

20 THE COURT: Yes.

21 (Government counsel confer)

22 MR. MacLAUGHLIN: I have nothing further.

23 THE COURT: Thank you.

24 (Counsel confer)

25 THE COURT: All right. Go ahead.

CROSS-EXAMINATION

BY MS. MAIER:

Q. Good afternoon, Dep. Marshal Belich. My name is Gloria Maier. I'm one of the attorneys representing Mr. Adams here today.

So you're currently a Deputy United States Marshal, correct?

A. Correct.

Q. In 2016 you were a Special Agent with the IRS?

A. That's correct.

Q. The Internal Revenue Service?

A. Yes.

Q. And you were added to this case because of your expertise in the areas under the jurisdiction of the IRS.

A. Correct.

Q. And according to the IRS Internal Revenue Manual, the IRS' criminal investigation mission is to investigate potential criminal violations of the IRC, the Internal Revenue Code, correct?

A. And, as I recall, related federal financial crimes involved in Title 18 as well.

Q. And you mentioned money laundering.

A. Correct.

Q. And so that's 18 U.S.C. 1956 and 18 U.S.C. 1957.

A. Correct.

1 Q. Your agency's jurisdiction does not typically include
2 mail and wire fraud under 18 U.S.C. 1341 and 1343.

3 A. My understanding is that usually that would fall as one
4 of the specified unlawful activities for what supports
5 the -- or not supports, but that is involved in the money
6 laundering activity, so quite often was involved with
7 investigating the SUA as well as the money laundering
8 activity as well.

9 Q. And so you testified that -- so if we can actually turn
10 to the Internal Revenue Manual which I have -- do you have a
11 big binder up in front of you?

12 A. I do.

13 Q. That says Defense Exhibits DX?

14 A. Yes.

15 Q. All right. So does this look to you like a printout
16 from the IRM?

17 A. Which number?

18 Q. Oh, I'm sorry. DX 87.

19 A. Yes, it does appear to be.

20 Q. And so if you turn to page 5 of that document, do you
21 see the description of money laundering strategy?

22 A. I do.

23 Q. And if you read that paragraph, that paragraph refers to
24 enforcement of the Bank Secrecy Act and related federal
25 money laundering statutes in support of the DOJ and Treasury

1 National Money Laundering Strategy, correct?

2 A. Yes.

3 Q. This document doesn't refer to mail or wire fraud.

4 A. Not specifically by name, no, it does not.

5 Q. And I want to now turn to your activity as a part of
6 this case team.

7 A. Okay.

8 Q. You accessed the Relativity database, you testified,
9 between May and July of 2016 --

10 A. Yes.

11 Q. -- is that right? Was this your first time having
12 involvement in the search of an attorney's files where the
13 attorney was the subject of the investigation?

14 A. I'm sorry. Of an attorney's files.

15 Q. Yes. So in this case you understand that the defendant,
16 Mr. Ed Adams, is an attorney?

17 A. Yes.

18 Q. And he is the subject of the investigation?

19 A. Correct.

20 Q. Is this your first time being involved in an
21 investigation where the subject of the investigation was a
22 lawyer and you were searching that lawyer's files?

23 A. This would be my first time as a case agent. I believe
24 I've been involved with search warrants, so I would have
25 searched records involving attorneys, potentially, just as

1 an assisting agent.

2 Q. Okay. But this was the first time that you recall where
3 you were a case agent assigned to such a case?

4 A. That's correct.

5 Q. And you testified on direct that if you saw something
6 that was potentially privileged, you would set it aside?

7 A. Yes.

8 Q. What specific indicia were you looking for to determine
9 whether you should set something aside?

10 A. I guess the first clue would be, you know, who it was to
11 or from, so whether it would be, like I said, letterhead.
12 But in this instance with an e-mail, I would look at the
13 e-mail address that it was -- you know, who the e-mail
14 correspondence would have been to or from, just to see if it
15 looked like it was a law firm e-mail address.

16 Q. So you were looking to see whether or not the document
17 was to or from a lawyer?

18 A. That would be a good clue. I mean, among other things.
19 If I do see anything -- depending on what I'm reviewing. I
20 mean, if I'm looking up an e-mail that I believe is with an
21 investor, but it turns out there's an attorney name on
22 there, then I would probably set that aside as well. So I
23 mean, if there's just anything that would lead me to believe
24 that might be correspondence with an attorney.

25 Q. Okay. So an attorney name would be something that would

1 be indicia of privilege.

2 A. Right, an attorney name. And I wouldn't limit it to
3 just that, but just anything that would lead me to believe
4 that that might be correspondence with an attorney.

5 Q. And what about if a document said "Privileged" on it?

6 A. Absolutely.

7 Q. And what if a document said "Work Product" on it?

8 A. That would definitely be something that -- yeah, it
9 would be a clue to at least set it aside and could
10 potentially be privileged.

11 Q. When you conducted searches in the database -- I mean,
12 you testified earlier that you searched for the word
13 "Rothman." What instructions were you given about how to
14 conduct your searches in the database?

15 A. I don't specifically recall instructions as to how to
16 search, but I guess rather than just browsing through
17 looking for anything, I was wanting to target it towards
18 something that I knew, you know, was more relevant to what I
19 was looking into at the time, such as a specific investor.

20 Q. And were you searching to prepare to speak to those
21 investors?

22 A. Either -- I don't recall if it was before or after the
23 interview, so it could have either been to prepare to speak
24 with them, or if I spoke with them and they indicated there
25 was e-mails with Mr. Adams, I could have been looking it up

1 after the fact. I don't recall in this instance if it was
2 before or after.

3 Q. So the purpose of your searching was in connection with
4 speaking to witnesses and witness interviews.

5 A. Correct.

6 Q. Were you given any instructions on the search terms that
7 you could use in your search?

8 A. I don't specifically recall receiving instructions. It
9 doesn't mean I didn't -- you know, there wasn't some
10 discussion about that, but I guess I figured that I would
11 just be more targeted towards what I'm looking towards, but
12 I don't specifically recall if there were instructions given
13 as to that.

14 Q. Were you free to choose your own search terms?

15 A. I was free to, yes. I had that on my own laptop and so
16 I could type in what I was willing to type.

17 Q. Were you given any restrictions on the search terms that
18 you could use?

19 A. Not that I'm aware of other than I would know not to
20 search something that would indicate that it might be
21 potentially privileged.

22 Q. In this case was there a search briefing of any kind?

23 A. There were meetings throughout the process in which we
24 were determining the mechanical filtering system and I guess
25 what we would include in that mechanical filtering. And

1 then at that point we had discussed even once we were able
2 to access it that, you know, we still needed to proceed with
3 caution because it wasn't a perfect system and we still
4 needed to make sure that we weren't going to be reviewing
5 privileged information, so there were multiple meetings in
6 which we discussed that.

7 Q. And so those meetings were focused on the mechanical
8 filtering of potentially privileged documents.

9 A. As well as once we were able to review what was -- the
10 remainder of what was left. After the mechanical filter
11 segregated, you know, the e-mails that it removed, we also
12 discussed on how to proceed beyond that point.

13 Q. But were you given any instructions during those
14 meetings on how to proceed with your searches in the
15 database?

16 A. I would say generally. I would assume that we did, but
17 I don't think it was so much of an instruction: This is how
18 you will search as to it was discussed that be cognizant of
19 what you're searching, you know.

20 Q. But you don't recall any specific instructions on how to
21 conduct your search.

22 A. I don't recall any specific instructions, no.

23 Q. When did you receive the warrant that related to the
24 Yahoo! e-mails?

25 A. I assisted -- let's see. Postal Inspector Kroells was

1 the affiant and I was assisting her a little bit in drafting
2 the affidavit. I just had some discussions with her at that
3 point and I believe that would have been in November,
4 October of '15, I'm guessing. So it would have been
5 sometime beyond that in March that it would have been -- you
6 know, the search would have been submitted -- or the warrant
7 would have been submitted to Yahoo! I wasn't involved in
8 even serving the warrant, so I'm not exactly sure on when
9 that would have been finalized.

10 Q. So you conducted limited searches in the database,
11 correct?

12 A. Correct.

13 Q. But other members of the prosecution shared documents
14 with you outside the database that they had discovered in
15 their searches of the Yahoo! e-mail.

16 A. Correct.

17 Q. And you testified that Inspector Kroells sent you
18 documents?

19 A. Yes.

20 Q. And AUSA Maria sent you documents?

21 A. Correct.

22 Q. Your declaration noted that Special Agent Khan sent you
23 documents. Did she or did she not send you documents?

24 A. She did not. When I prepared that, I didn't have access
25 to my e-mail from IRS at that point and I was going off of

1 recollection.

2 And I guess the way I was thinking at the time,
3 collectively the two agents, the two case agents that were
4 in the Cities had access to it and I knew that they reviewed
5 it and shared e-mails with me. As I went through looked at
6 it, "they" was just Christi and then David Maria.

7 So I didn't receive any -- based on the review
8 last week of my inbox from IRS, that I didn't receive any
9 e-mails from Jennifer.

10 Q. And did you have conversations with Inspector Kroells
11 about documents that she provided you?

12 A. I don't recall specifically, but I would imagine that we
13 probably did discuss them.

14 Q. And what about with AUSA Maria? Did you have
15 conversations with AUSA Maria about the documents that he
16 provided you?

17 A. I'm sure we probably did.

18 Q. Now, we were talking about the mission of the IRS. And
19 so the Internal Revenue Code is Title 26, correct?

20 A. Correct.

21 Q. And so part of your job as an IRS criminal investigator
22 was to investigate potential criminal violations under
23 Title 26?

24 A. Correct.

25 Q. And it involves investigations of violations of 26

1 U.S.C. 7206(1), which is willfully making false statements
2 on a tax return, is that right?

3 A. Correct.

4 Q. Now, Dep. Marshal Belich, I'm going to ask you some
5 general questions about the Yahoo! e-mails that were shared
6 with you by the other members of the prosecution team. I
7 want to be clear that I'm not asking you about the specific
8 contents of those documents. Do you understand that?

9 A. Yes.

10 Q. Some of Mr. Adams' Yahoo! e-mails that the other members
11 of the prosecution team shared with you related to
12 Mr. Adams' personal tax returns, correct?

13 THE COURT: I don't understand how that question
14 isn't dealing with the content of the e-mail.

15 MS. MAIER: It's the subject of the e-mails. It's
16 not underlying what was in those documents.

17 THE COURT: But this is the information that the
18 Government doesn't have access to right now, correct?

19 MS. MAIER: It is.

20 THE COURT: Okay. We can move on.

21 MS. MAIER: Your Honor, would you permit questions
22 about the senders and recipients of those documents, the
23 type of information that would typically appear on a
24 privilege log.

25 THE COURT: I feel like this is a little bit

1 difficult, because it's asking him about something that he
2 knows and you know, but they don't know, right?

3 Am I right about that?

4 MR. MacLAUGHLIN: That is right, Your Honor.

5 THE COURT: And I thought part of the reason that
6 everyone was okay with them not knowing it was that we
7 weren't going to go there today.

8 MS. MAIER: This relates to his recollection of
9 the general types of documents related to sort of the
10 ongoing execution of the search that were being viewed and
11 were being provided. It's similar to the search terms. We
12 don't have search terms for these documents because he did
13 not search for them.

14 THE COURT: Okay. Ask a question and I'll let you
15 know.

16 BY MS. MAIER:

17 Q. Do you recall if any of the e-mails that you were
18 provided were either sent or received by Murry & Associates?

19 THE COURT: I'll allow it.

20 MR. MacLAUGHLIN: Okay.

21 A. I'm sorry. Can you repeat the question?

22 Q. Do you recall if any of the e-mails that were provided
23 to you from Mr. Adams' Yahoo! e-mail database by the other
24 members of the prosecution team were sent or received from
25 or by Murry & Associates?

1 A. I don't recall any of those e-mails from -- I don't
2 recall any of the e-mails that you're speaking of involved
3 with the Yahoo! warrant.

4 Q. You don't recall one way or the other sitting here
5 today.

6 A. I don't recall.

7 Q. Is it your understanding that documents relating to the
8 subject of Mr. Adams' personal tax returns were authorized
9 to be searched for or seized by the Yahoo! search warrant?

10 A. I guess I would review the --

11 Q. So the affidavit is behind -- I'm sorry -- the warrant
12 is behind tab 11 of the big binder?

13 MR. MacLAUGHLIN: It strikes me as calling for a
14 legal conclusion.

15 THE COURT: Are you asking him whether the warrant
16 says that or whether he believes it means that?

17 MS. MAIER: Well, whether the warrant says it --

18 THE COURT: I can read the warrant.

19 BY MS. MAIER:

20 Q. You were involved in preparing the affidavit related to
21 the search warrant in this case?

22 A. Limited. I assisted Inspector Kroells.

23 Q. And the subject of probable cause addressed in the
24 affidavit does not describe tax fraud.

25 A. I don't believe it did.

1 Q. Now, if you could turn to the document that is marked in
2 the big binder with the tab 64.

3 Dep. Marshal Belich, do you have that in front of
4 you?

5 A. Yes, I do.

6 Q. And do you see the column of this spreadsheet that has
7 your name at the top?

8 A. Yes.

9 Q. And I will represent that this is a pivot table that was
10 created from a large spreadsheet of data that was produced
11 by the Government of the activity in the Relativity
12 database, and so this summarizes the different actions in
13 the database taken by the different members of the
14 prosecution team.

15 THE COURT: Can you explain what a pivot table is?

16 MS. MAIER: Yes. So within Excel when you have a
17 large spreadsheet of data, there's an automatic function
18 sort of like a sum function within Excel where you can
19 generate by identifying variables which -- you know, telling
20 Excel to create a chart, and it creates a summary chart of
21 the database.

22 THE COURT: That's called a pivot table.

23 MS. MAIER: Yes.

24 THE COURT: Thank you.

25

1 BY MS. MAIER:

2 Q. Do you see the column that has the number 21 at the top
3 of it?

4 A. Yes.

5 Q. And it's 21 document queries?

6 A. Yes.

7 Q. And so does this reflect that when you were active in
8 the database, you performed 21 queries in the data?

9 MR. MacLAUGHLIN: Objection. Lack of foundation.
10 This is not something this witness knows anything about.

11 THE COURT: Sustained. You can ask him if he
12 thinks this sounds right.

13 Q. Recalling your time in the database between May and
14 July of 2016, you did run some searches in that database,
15 correct?

16 A. Yes.

17 Q. And you viewed documents while you were active in the
18 database.

19 A. Yes.

20 Q. And do you recall using the export function of
21 Relativity at one point to export a document out of
22 Relativity?

23 A. I don't specifically recall it, but I don't -- I guess I
24 wouldn't be surprised that I did it.

25 Q. And do you know that Relativity has a tagging function?

1 A. Yes, I think I did know that.

2 Q. When you were in the database, you did not tag any
3 documents that you were looking at.

4 THE COURT: Answer --

5 A. I'm sorry. I don't recall tagging anything.

6 Q. You don't recall tagging anything?

7 A. No.

8 Q. Do you recall tagging any -- therefore, since you don't
9 recall tagging anything, you don't recall tagging anything
10 as relevant, do you?

11 A. No.

12 Q. And you don't recall tagging anything as irrelevant, do
13 you?

14 A. No.

15 Q. You did not tag any documents to identify them as
16 documents to be seized.

17 A. No.

18 Q. Did you seize any documents in connection with the
19 Yahoo! warrant?

20 A. No, not that I know of.

21 Q. So you did some searching in those documents, but you
22 did not seize any documents.

23 A. I guess I -- I know I viewed a few of the e-mails, you
24 know, relating to that one witness, I guess. I don't recall
25 if I would have saved those e-mails or if I just viewed

1 them. I don't recall anything being relevant in those
2 e-mails, so I don't recall saving them, printing them,
3 anything like that. So no, as far as I'm aware, I didn't
4 seize them.

5 Q. And you didn't seize any other documents in this
6 database.

7 A. No.

8 MS. MAIER: Could I have one minute?

9 THE COURT: Yes.

10 (Defense counsel confer)

11 BY MS. MAIER:

12 Q. On the subject of the documents that were shared with
13 you, do you recall as a general subject matter that those
14 documents related to Mr. Adams' personal tax returns?

15 MR. MacLAUGHLIN: Objection. We haven't seen
16 those.

17 THE COURT: I'm going to overrule or -- you can't
18 ask it.

19 MS. MAIER: May I have one more moment and I may
20 be done.

21 (Pause)

22 MS. MAIER: I have no further questions for this
23 witness.

24 MR. MacLAUGHLIN: No redirect.

25 THE COURT: Okay. I have a couple questions for

1 you.

2 THE WITNESS: Yes, ma'am.

3 **E X A M I N A T I O N**

4 BY THE COURT:

5 Q. During your time as an IRS agent, were you ever involved
6 on a team during an investigation that didn't lead to tax
7 charges?

8 A. Yes.

9 Q. Were you ever involved in a case that didn't even lead
10 to this referral process that we've heard a little bit
11 about?

12 A. Yes.

13 Q. Do you ever get asked to be on a case because of your
14 knowledge of tax documents that might go to other charges,
15 or are you usually asked to be on a case because you're
16 laying the groundwork for tax charges?

17 A. I'd say neither. A lot of times we're asked to assist
18 in the investigation, I guess, just for our expertise.
19 There's a lot that we can -- "we" meaning the IRS agents --
20 can bring to an investigation aside from just tax.

21 There is -- you're involved -- if there does
22 become a tax charge, but even if it's just -- whether it be
23 a drug charge or a fraud case, there's a lot that an IRS
24 agent can bring to a case or an investigation just from a
25 financial investigative standpoint.

1 Q. The interviews that you did, Rothman, were those yours
2 because they were tax in nature, or because they were up
3 north, or some other reason altogether?

4 A. Neither. We had a large number of investors in this
5 case that we wanted to reach out to and interview and we
6 just literally split them up. And as I recall, throughout
7 the country -- I don't -- I believe one of the Rothmans
8 might have been in Ohio. So I mean, there were a lot of
9 just telephone interviews, so I just literally grabbed a
10 handful of them.

11 THE COURT: Any questions raised by my questions?

12 MS. MAIER: Just one, Your Honor.

13 THE COURT: Certainly.

14 **FURTHER CROSS-EXAMINATION**

15 BY MS. MAIER:

16 Q. Did any other members of the prosecution team request
17 guidance from you based on your tax expertise?

18 A. I'm sorry. Can you ask that again or rephrase it?

19 Q. Did any other members of the prosecution team request
20 guidance from you on tax issues based on your tax expertise?

21 A. No. I would say if there's any tax issues, they might
22 have not asked me for guidance, but asked me as to how we
23 would pursue potential tax charges.

24 Q. And did you have conversations like that in this case?

25 A. As to whether or not we would pursue tax charges?

1 Q. Yes.

2 A. Yes.

3 MR. MacLAUGHLIN: Could we have a time frame,
4 please?

5 Q. During March of 2016 to April of 2017, did you have such
6 conversations?

7 A. Not that I recall.

8 MS. MAIER: Okay.

9 THE COURT: Thank you. Anything raised by my
10 questions?

11 MR. MacLAUGHLIN: Yes, actually, indeed.

12 **REDIRECT EXAMINATION**

13 BY MR. MacLAUGHLIN:

14 Q. So, Former Special Agent Belich, 1956 and 1957 are
15 both -- especially 1956 -- is a very complex statute,
16 correct?

17 A. Correct.

18 Q. And that is a statute that deals with complex monetary
19 transactions in criminally derived property.

20 A. Correct.

21 Q. And that is an area of law enforcement that is specially
22 delegated to the IRS, right?

23 A. Correct.

24 Q. And in fact, you guys, you IRS agents, you Special
25 Agents, you receive a lot of training about how to analyze

1 bank accounts, follow money, make it understandable to a
2 jury, right?

3 A. That's correct.

4 Q. And so you are routinely brought into financial cases to
5 do money laundering, right?

6 A. Correct.

7 Q. Some of those also result in tax charges, but many
8 don't, right?

9 A. That's correct.

10 Q. And so when you're brought in to work up a 1956 or 1957
11 charge, you need a specified unlawful activity, right?

12 A. Correct.

13 Q. It's the specified unlawful activity that throws up
14 proceeds that's the beginning of a money laundering case,
15 right?

16 A. That's correct.

17 Q. And in effect then, when you're brought in to do a 1956
18 or a 1957 count in a fraud case, you're joining in the fraud
19 investigation, right?

20 A. That's correct.

21 Q. And that's why you were looking up Rothman when you were
22 doing the one search you did, true?

23 A. Correct.

24 Q. And you guys bring expertise and putting together charts
25 and sorting the wheat from the chaff and showing that this

1 money isn't really doing what it looks like it's doing in a
2 concealment case, right, like 1956, conceal or disguise the
3 nature, location, source, ownership or control of the
4 proceeds of specified unlawful activity.

5 A. Correct.

6 Q. So a big part of what you guys do is Title 18, sometimes
7 with no involvement at all with Title 26 offenses.

8 A. That's correct.

9 MR. MacLAUGHLIN: Nothing further.

10 MS. MAIER: Couple questions.

11 THE COURT: I assumed so.

12 **RECROSS-EXAMINATION**

13 BY MS. MAIER:

14 Q. Dep. Marshal Belich, did you have any involvement in the
15 preparation of the tax charges in this case?

16 A. Yes.

17 Q. And what involvement was that?

18 A. Once the -- well, I think I would have written the
19 request to expand -- it's a Title 26 expansion, I guess,
20 it's referred to. I don't know what the -- it's to expand
21 the grand jury investigation to include a Title 26 charge.

22 So I believe I would have written that request, as
23 well as I was involved in interviewing the return preparers,
24 a couple sources of income, and I began writing up a
25 prosecution report, Special Agent's Report is what it's

1 called, and I was in the process of writing that when I
2 accepted a job with the Marshals.

3 Q. And so what period of time were you working on those
4 efforts?

5 A. From I believe it was November was when the approval
6 went through for the Title 26 grand jury, and then it was
7 in November of 2016 -- 2017. No, no. I'm sorry.

8 THE COURT: That was just two months ago.

9 A. November of 2016 through February of 2017, so about
10 three months.

11 Q. Okay. November of 2016 through February of 2017.

12 A. Correct.

13 Q. And that was during the period of time that searches
14 were being conducted in the Yahoo! database.

15 A. I don't know if they were or not. I don't think I was
16 at that point. I'd long given up on being able to search
17 that by that point.

18 Q. But you were a member of the prosecution team during
19 that time period.

20 A. I was, but I don't know if anyone was still searching
21 the e-mails at that point. I was -- and actually, if it was
22 in November when it was approved, prior to that, prior to
23 submitting the request for grand jury expansion, I would
24 have reviewed the tax returns obtained through the *ex parte*
25 order prior to that search, so I would have been probably

1 working on that -- you know, reviewing the tax returns for a
2 month or so prior to submitting the expansion request.

3 Q. And you continued to have communications and
4 conversations with other members of the prosecution team
5 related to the development of the tax charges.

6 A. Less so there at that point. I think one of the agents
7 might have been busy on another case. I was pretty much
8 digging into getting the tax case moving to try and catch up
9 to where we were in the fraud case.

10 Q. But you weren't doing that totally on your own, were
11 you?

12 A. Largely, yes. We also had a revenue agent assigned to
13 the case and she assisted me on some of it and then I had
14 communications with the AUSA as well, I think during that
15 time period I may not have had as much communication with
16 the other agents.

17 Q. But you had communications with AUSA Maria about that
18 during that period of time --

19 A. Yes. About developing the tax investigation?

20 Q. Yes.

21 A. Yes.

22 Q. When were the e-mails from the database shared with you
23 by AUSA Maria and Agent Kroells?

24 THE COURT: If you recall.

25 A. I think the first one would have been in May or June of

1 '16. It was shortly after it was available. They could
2 have all been within that month or they could have been
3 spread out. I just remember that the first one was shortly
4 after. They might have all been in like May or June, but
5 there might have been a few after that. I don't recall.

6 MS. MAIER: One moment.

7 (Pause)

8 MR. WADE: Your Honor, there's -- with respect to
9 this witness, I don't think we have any more testimony, but
10 there's sort of a technical matter on -- given the scope of
11 the examination just put forward by the Government, it's not
12 clear, I think, whether full Jencks Act statements for this
13 witness were disclosed. That's my sense from conferring
14 with counsel in between as we were shifting the podium.

15 And so I assume counsel will go and look to see if
16 there are any Jencks Act statements, and if there's no
17 objection to recalling the witness to the extent that those
18 Jencks Act statements are relevant to this proceeding, you
19 know, we just want to make clear for the record that we
20 believe in light of some of the testimony regarding the
21 submission of the tax charges to DOJ Tax and the like, that
22 there may well be -- that was not a part of this before and
23 there may well be Jencks Act statements relating to that
24 that need to be produced.

25 So I don't know if there are or there aren't, but

1 we want to preserve our rights on that.

2 THE COURT: Mr. MacLaughlin?

3 MR. MacLAUGHLIN: We'll take a look. I doubt if
4 there are any. When we expand a grand jury case to include
5 tax charges, the IRS agent helps us write a letter, but we
6 sign it, they're our words, and we send that out to DOJ Tax.
7 I don't think that the early drafts of the SAR, the Special
8 Agent's Report, are Jencks here. That's about the
9 underlying tax case, not about how this warrant was
10 executed.

11 So we'll take a look is the bottom line.

12 MR. WADE: I would respectfully request that the
13 underlying documents to the extent they relate to what was
14 just testified to are Jencks if they're statements of the
15 witness.

16 THE COURT: Let's pick one lawyer. Actually --

17 MR. WADE: I think we're done with testimony. We
18 just wanted to make the record.

19 THE COURT: So the question is whether the letters
20 sent to Main Justice are Jencks as to this witness
21 because -- not because they have anything to do with the
22 execution of the search warrant, but because it's a
23 statement that he made relevant to this entire case ever?

24 MR. WADE: No, they're relevant to his acquisition
25 of knowledge during the period in which the warrant was

1 being executed and documents were being shared with him.

2 And to the extent, for example, if he incorporated
3 information he received from the Yahoo! materials into a
4 memo that he submitted to the Government that he wrote,
5 that's his statement, that would be Jencks.

6 THE COURT: And you know he has not testified
7 either way as to whether he did or didn't do that, nobody
8 asked him that question.

9 MR. WADE: Well, he did testify that he prepared a
10 bunch of documents. I don't know --

11 THE COURT: Nobody asked him whether it was based
12 on Yahoo!, any of the information -- right? That's not --
13 nobody asked that.

14 MR. WADE: That's a fair point, Your Honor. I
15 mean, we can certainly pose the question to the witness
16 or --

17 THE COURT: I think we're done. I'll let the
18 Government look into what the documents are rather than
19 talking theoretically about whether they exist or not. You
20 have definitely raised a flag on the issue so that we can
21 keep it in light.

22 MR. WADE: That's all I intended to do, Your
23 Honor.

24 THE COURT: Okay. Thank you.

25 I think we're done. I think we've gotten through

1 the rounds of -- you were last and you were done.

2 MS. MAIER: Yes, I had no further questions.

3 THE COURT: Oh, okay. Thank you.

4 All right. You may step down. Thank you. Safe
5 travels.

6 THE WITNESS: Thank you.

7 THE COURT: And we are done with testimony. Let's
8 take a minute to talk about what tomorrow looks like.

9 I've got a court reporter I think starting at
10 8:30, is that right, Abby?

11 THE CLERK: As far as I can tell. Brian just
12 asked that. It's 9:00 a.m.

13 THE COURT: Oh. We'll see. Let's try to get here
14 and get ready to go, but I'll let you know if I can.

15 Mr. MacLaughlin, I think you auto-populate in my
16 e-mail, so if I e-mail you this evening about clarification
17 on that, will you please e-mail opposing counsel and let
18 them know whether we're going to start at 8:30 or 9:00?

19 MR. MacLAUGHLIN: I certainly will.

20 THE COURT: Okay. So tomorrow we have?

21 MR. MacLAUGHLIN: Tomorrow we'll start with
22 Jennifer Khan.

23 THE COURT: Okay.

24 MR. MacLAUGHLIN: I anticipate that her testimony
25 on direct will be much shorter than Inspector Kroells and a

1 bit longer than Mr. Belich's, because she was a little bit
2 more involved in investigating the case.

3 After that we propose to put on Mark Zeitz.

4 THE COURT: Okay.

5 MR. MacLAUGHLIN: Then the issue is going to be
6 whether we call Dan Czapko, who is the ALS guy that was
7 hands-on. We believe that everything ALS did will be
8 covered by Mark Zeitz's testimony. They may want to call
9 him.

10 THE COURT: And you plan to have him available.

11 MR. MacLAUGHLIN: We're going to have him
12 available. We may actually object to him being called, you
13 know, as cumulative, whatever the Court chooses to do with
14 that if --

15 THE COURT: But you're not going to quibble about
16 whose subpoena he's here on. He'll be here so that if the
17 defense wants to call him and I allow it --

18 MR. MacLAUGHLIN: He will be here. Yes, he will
19 absolutely be here.

20 THE COURT: Okay. And then we're going to talk
21 after that about -- I want the parties to spend some time --
22 with all your spare time between now and when I see you
23 again -- thinking about schedule and about limitations on
24 the extent of briefing and about whether we can narrow the
25 topics to be addressed at all or not in the post-hearing

1 briefing, so be thinking about that.

2 MR. MacLAUGHLIN: Very good.

3 THE COURT: Anything else we need to handle right
4 now?

5 MR. MacLAUGHLIN: Not from the United States.

6 MR. WADE: No, Your Honor.

7 THE COURT: Are you sure?

8 MR. WADE: I'm sure. I have logistical questions
9 that I can inquire with your deputy about after we're off
10 the record.

11 THE COURT: Okay. Well, I don't mind you
12 inquiring. I'm completely informal.

13 MR. WADE: I'm just wondering the extent to which
14 we can leave materials in the courtroom and --

15 THE COURT: You can totally leave materials in the
16 courtroom. We will lock -- is that right, sir, we can lock
17 the courtroom and protect their stuff?

18 COURT SECURITY OFFICER: Yes, Your Honor.

19 THE COURT: Okay. And I promise not to rifle
20 through any of your belongings.

21 MR. WADE: Your Honor's welcome to review any of
22 the binders --

23 (Laughter)

24 THE COURT: Okay. Yes, feel free to leave
25 whatever you need to make things more comfortable.

1 And any other logistical questions?

2 MR. WADE: No, Your Honor.

3 MR. MacLAUGHLIN: None.

4 THE COURT: Okay. Great. We're in recess. Have
5 a good night, everybody.

6 (Proceedings concluded for the day at 5:15 p.m.)

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I, **TIMOTHY J. WILLETTE**, Official Court Reporter
for the United States District Court, do hereby
certify that the foregoing pages are a true and
accurate transcription of my shorthand notes,
taken in the aforementioned matter, to the best
of my skill and ability.

/s/ Timothy J. Willette

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